No. 8117

United States

Circuit Court of Appeals

For the Ninth Circuit.

FERRYBOATMEN'S UNION OF CALIFORNIA, an unincorporated association, FERRYBOATMEN'S UNION OF CALIFORNIA, a non profit corporation, and C. W. DEAL,
Appellants,

vs.

NORTHWESTERN PACIFIC RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, and THE WESTERN PACIFIC RAILROAD COMPANY,
Appellees.

FERRYBOATMEN'S UNION OF CALIFORNIA, a non profit corporation, and C. W. DEAL,
Appellants,

vs.

SOUTHERN PACIFIC COMPANY,
Appellee.

FERRYBOATMEN'S UNION OF CALIFORNIA, a non profit corporation and C. W. DEAL,
Appellants,

vs.

NORTHWESTERN PACIFIC RAILROAD COMPANY,
Appellee.

Transcript of Record

Upon Appeals from the District Court of the United States for the Northern District of California, Southern Division.

FILED

APR 21 1936

PAUL P. O'BRIEN,

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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H. C. BOOTH, Esq.,
A. A. JONES, Esq.,
65 Market St.,
S. F. Calif.,
Attorneys for Appellees.

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 1955-S—In Equity.

IN THE MATTER OF AN AWARD FILED HEREIN OCTOBER 31, 1927, pursuant to an arbitration held UNDER THE ACT OF CONGRESS known as the RAILWAY LABOR ACT, between The Atchison Topeka and Santa Fe Railway Company, Northwestern Pacific Railroad Company, Southern Pacific Company, and The Western Pacific Railroad Company, as parties of the first part and certain employees thereof, represented by the Ferryboatmen's Union of California, as the party of the second part.

FERRYBOATMEN'S UNION OF CALIFORNIA, a non profit corporation, FERRYBOATMEN'S UNION OF CALIFORNIA, an unincorporated association and C. W. DEAL (as the business manager and executive officer of said Union) suing on behalf of himself and the other members of said Union and all persons interested in the subject matter of this bill in equity, Plaintiffs,

vs.

NORTHWESTERN PACIFIC RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY and THE WESTERN PACIFIC RAILROAD COMPANY, corporations, Defendants. [1*]

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*Page numbering appearing at the foot of page of original certified Transcript of Record.

[In action 1955-S the plaintiffs filed an "Ancillary Bill to enforce Decree already rendered herein". The allegations therein contained are substantially the same as the bill against the Southern Pacific Company which is printed later herein, being action #3635-S. For reasons of economy and in order to avoid unnecessary duplication this bill is not printed here.

The Southern Pacific Company and the Northwestern Pacific Railroad Company filed answers to this bill. The allegations of these answers are substantially the same as the allegations of the Southern Pacific Company in their answer in #3635-S, which is printed later herein. They are not printed here as a matter of economy and in order to avoid unnecessary duplication.]

[Title of Court and Cause—No. 1955-S.]

NOTICE OF MOTION FOR REFERENCE TO COMMISSIONER ETC.

To the Southern Pacific Company, Northwestern Pacific Railroad Company, The Western Pacific Railroad Company and to their respective counsel:

You and each of you will please take notice that on Monday, the 25th day of September, 1933, at the hour of 10 A. M., or as soon thereafter as counsel can be heard, in the court room of the above entitled court, Ferryboatmen's Union of California, an unincorporated association, and Ferryboatmen's Union of California, a corporation, will move the above entitled court for its order referring the above matter to a commissioner to determine how much money is due the members of the Ferryboatmen's Union of California, in accordance with and under the decree heretofore entered herein and that thereafter this Court issue execution or other

process herein to enforce the collection of the amounts so found due and that the court make such other orders as will be necessary or proper to carry into effect the judgment and decree heretofore entered herein. [11]

Said motion will be based on the ground that the decree heretofore entered herein did not fix the amounts due and that the amounts due have not been paid by the carriers as required by said judgment and decree.

Said motion will be based on the further ground that the issuance of said orders will be in the furtherance of justice.

Said motion will be made on all the records, papers and files herein, upon affidavit served herewith, or at or prior to the hearing of the motion herein, and upon such testimony as may be adduced at said hearing.

September 20th, 1933.

DERBY, SHARP, QUINBY & TWEEDT

Solicitors for Ferryboatmen's Union of California (an unincorporated association) and Ferryboatmen's Union of California (a non profit corporation).

[Endorsed]: Receipt of a copy of the within NOTICE OF MOTION FOR REFERENCE TO COMMISSIONER ETC., is hereby acknowledged this 20th day of September 1933.

H. C. BOOTH

A. A. JONES

Solicitors for Southern Pacific Co. and Northwestern Pacific Railroad Co.

Filed Sep. 20, 1933. [12]

[Title of Court and Cause—No. 1955-S.]

AFFIDAVIT OF C. W. DEAL.

State of California
City and County of San Francisco—ss.

C. W. DEAL, being first duly sworn, deposes and states as follows: he is the secretary and an executive officer of Ferryboatmen's Union of California above named and is personally familiar with the facts set out in this affidavit.

In the judgment heretofore entered herein, the Court ordered the above named carriers to observe the following rules as and from March 1, 1928:

> "Rule 6. Assigned crews will work on the basis of eight (8) hours or less on watch each day for six (6) consecutive days."
>
> "Rule 8. The monthly salary now paid the employes covered by this agreement shall cover the present recognized straight time assignment. All service hourage in excess of the present recognized straight time assignment shall be paid for in addition to the monthly salary at the pro rata rate". [13]

Said judgment also provided that

> "the above named carriers and each of them shall, * * * put said wages and rules into effect as of the effective dates above mentioned * * * and cause all of said employes to be paid all back pay retroactively or otherwise due to said employees or any of them in accordance with said award and this judgment".

By said award and judgment it was decreed that all men heretofore working on a 12-hour per day basis, work on an 8 hour per day basis, such men being hereinafter referred to as "said former 12-hour men".

Notwithstanding the agreement of the parties and the judgment based upon said award, said carriers continued to employ "said former 12-hourmen" in excess of 8 hours per day, to-wit, on watches averaging 12 hours per day, until on or about September 1, 1928.

During the period from and including March 1, 1928, to September 1, 1928, all of "said former 12-hour men" above mentioned were worked in excess of 8 hours per day as fixed in said award. "Said former 12-hour men" have not been paid the over time due them on account of being worked in excess of the 8 hours per day fixed in said judgment and decree and sums in excess of $40,000.00, plus interest, are now due, owing and unpaid from the carriers above named to "said former 12-hour men".

Demand has been made on said carriers to comply with said judgment and decree, but said carriers and each of them have failed and refused to do so.

Said Union and affiant do not know the exact amount due each man. The exact amount due each man depends on complicated and intricate computations requiring the services of a commissioner or special master. The records and accounts of the

carriers above [14] mentioned contain time cards and other data from which it can be determined the exact number of hours worked by each man during the period in question, the exact hourly rate, the amount of money paid him on the former rates and the amount due him under the award. These records are voluminous and will require considerable checking and computation in order to fix the exact amount due "said former 12-hour men".

C. W. DEAL

Subscribed and sworn to before me this 23rd day of September, 1933.

[Seal] KATHRYN E. STONE

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Due service and receipt of a copy of the within Affidavit of C. W. Deal in support of motion for reference to a commissioner is hereby acknowledged this 23 day of September, 1933.

H. C. BOOTH & A. A. JONES

Solicitors for Southern Pacific Company and Northwestern Pacific Railroad Company.

C. W. DOOLING

Solicitors for Western Pacific Railroad Company.

Filed Sep. 25, 1933. [15]

[Title of Court and Cause—No. 1955-S.]

AFFIDAVIT OF C. W. DEAL IN SUPPORT OF MOTION TO REFER TO COMMISSIONER ETC.

State of California
City and County of San Francisco—ss.

C. W. DEAL, being first duly sworn, deposes and states as follows:

I am the secretary, business manager and principal executive officer of Ferryboatmen's Union of California, both of the original unincorporated association and of the association as incorporated under date of October 2, 1931.

I am familiar with all the matters and things involved in the above proceeding and appeared before the Arbitration Board generally, on behalf of the Union, both in the arbitration proceedings and subsequent litgation.

The pending controversy involves two questions: one the amount due the men and the other the refusal of the carriers [16] to pay the men anything at all, claiming that nothing is due.

So far as the correct amount due is concerned, if anything, it will be necessary to check the records of the carriers and make intricate and complicated computations to find out what is due each man concerned, if anything.

No stipulation or agreement has been entered into fixing the amount due, although, in litigation pending in the State courts, a tentative stipulation was discussed, whereby the Union agreed to accept

the figures of the carrier, if certain other matters were in exchange stipulated to. However, said stipulation was never formally entered into and the amounts due have not been agreed to in said suit, or otherwise, or at all.

The question as to whether any amount is due or not, is raised by the refusal of the carriers to observe the plain language of the Arbitration Award. There is nothing uncertain or ambiguous in that Arbitration Award. The Award merely adopted for general use a rule which has been in existence since 1919 and which has been unqualifiedly put in practice, without exception and without there in fact being any understanding as to its meaning or application ever since 1919 to date.

There is no difference between the parties as to the meaning or application of the award, as the award merely adopts language theretofore used by the parties and put into actual effect and operation since 1919 to date without any dispute or misunderstanding.

Before the pending controversy, the men were employed by the carriers under Rule 6. which read as follows:

> "Assigned crews, except as hereinafter provided, will work either on the basis of
>
> (a) Twelve (12) hours on watch, then twenty-four (24) hours off watch, without pay for time off,
>
> OR
>
> (b) Eight (8) hours or less on watch each day for six (6) consecutive days. **[17]**

As will be seen, the rule provided an alternative for 12 and 8 hour watches. The Award did not change the language of the rule, but did delete the portion permitting a 12-hour watch.

Ever since 1919 the 8-hour rule has been construed to mean that for every minute worked in excess of 8 hours, the men were entitled to overtime. In the instant case, the carriers have refused to apply the rule in the same way that they have been doing since 1919.

Under the Arbitration Agreement of the parties, the only question submitted to arbitration was whether or not the 12-hour day should be abolished. The question as to the date the change should take effect was expressly not left to the Arbitration Board, but was fixed by the express agreement of the parties. This agreement provided that the abolishment of the 12-hour day should go into effect on the first of the month following the making of the Award. The Award was made in October, 1927, and the effective date of the abolishment of the 12-hour day was, therefore, November 1, 1927. While the matter was pending on appeal, on May 19, 1928, the parties entered into an agreement advancing the effective date to March 1, 1928, and the judgment which was entered on September 29, 1928, required the carriers to put the rule into effect retroactively as of March 1, 1928, in accordance with the agreement of the parties.

At no time have any of the carriers made application to have any controversy referred back to the

Arbitration Board, and, under the Railway Labor Act, the judgment is now final.

There is no uncertainty in the Award or in the rule in question or any ambiguity in connection therewith and the only controversy arises out of the refusal of the carriers to put the rule into effect, in the instant case, in the same manner as it has been in effect in every other case since 1919.

The controversy arises out of the necessity of carrying out the agreement between the parties for the retroactive [18] application of the Award. No question in relation to this matter was submitted to the Arbitration Board and under the Railway Labor Act, no question can be considered by the Arbitration Board unless the same is specifically agreed to by the parties. In fact the controversy arises out of matters which took place after the Arbitration Award itself was made.

C. W. DEAL

Subscribed and sworn to before me this 24th day of November, 1933.

[Seal] KATHRYN E. STONE

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Copy served on Mr. Booth by me November 27, 1933.

JOSEPH C. SHARP

Filed Nov. 28, 1933. [19]

In the Southern Division of the United States District Court, in and for the Northern District of California Second Division

No. 3635-S

IN EQUITY.

FERRYBOATMEN'S UNION OF CALIFORNIA, a non profit corporation, FERRYBOATMEN'S UNION OF CALIFORNIA, an unincorporated association and C. W. DEAL (as the business manager and executive officer of said Union) suing on behalf of himself and all persons interested in the subject matter of this bill in equity,

Plaintiffs,

vs.

SOUTHERN PACIFIC COMPANY, a corporation,

Defendant.

BILL IN EQUITY TO ENFORCE DECREE

Come now the plaintiffs above named and for cause of action against defendant allege as follows:

I.

Ferryboatmen's Union of California is a labor union duly existing under and by virtue of the laws of the State of California. On October 2, 1931, said Union was incorporated as a non profit corporation

under the laws of the State of California. At and prior to October 2, 1931, Ferryboatmen's Union of California, an unincorporated association, was a labor union existing at all times mentioned herein under and by virtue of the laws of the State of California.

On October 2, 1931, said unincorporated association transferred and assigned to said corporation all its rights and interest in the decree hereinafter mentioned. However, said [67] unincorporated association still appears as a party in the proceeding in which said decree was obtained and no order substituting said corporation for said unincorporated association has been made.

II.

Defendant, Southern Pacific Company, is and at all times mentioned herein was a corporation duly organized and existing and doing business in the State of California.

III.

At all times mentioned herein said unincorporated association and said incorporated union each consisted of many hundreds of men employed by defendant herein and other carriers operating ferry boats on San Francisco Bay. Up to October 2, 1931, said unincorporated association was and thereafter said incorporated union was and now is the duly designated and acting representative of said employees as defined and provided for in the Rail-

way Labor Act heretofore enacted by the Congress of the United States.

IV.

At all times mentioned herein, defendant was and still is a carrier, as the same is defined in said Railway Labor Act and was and still is an interstate carrier subject to the provisions of said Act. At all of said times the members of said Union, both unincorporated and incorporated, were employees, as the same are defined in said Act.

V.

In the year 1925 said employees, as represented by said Union, agreed in writing with said carrier, as to what [68] wages and working conditions should govern said employees. Said writing provided that crews of said men employed in various positions by said carrier should work in certain positions on the basis of "12 hours on watch, then 24 hours off watch, without pay for time off" and in other positions on the basis of "8 hours or less on watch each day for six consecutive days". The hours so fixed for such positions were and are known as straight time and all time employed each day in excess of such straight time so fixed for such positions is known as overtime, that is to say: at all times herein mentioned, twelve hours constituted straight time on jobs requiring "12 hours on watch", and all time in excess of twelve hours constituted overtime; and eight hours constituted

straight time on jobs requiring "8 hours or less on watch each day", and all time in excess of eight hours each day constituted overtime. Under the agreement made as aforesaid, the wages of said men were fixed at a monthly salary specified in said agreement which monthly salary was agreed to cover straight time only and said agreement provided that each man be paid for all overtime he was worked by the carrier each day in excess of the eight or twelve hours per day straight time fixed for his particular position; and that he should be paid for such overtime in addition to said monthly salary, such overtime to be on an hourly wage basis ascertained by pro rating the regular monthly salary by the number of hours straight time fixed for his position in said agreement.

VI.

In the year 1927 a controversy existed between said employees and defendant herein. Thereupon said parties entered into an agreement, as provided by section 7 of said Act, [69] which agreement provided for the settlement of said controversy by arbitration pursuant to the terms of said Railway Labor Act. Under said agreement the parties submitted to arbitration whether or not there should be an increase in the wages to be paid by the carriers to the employees and whether or not certain men then working on a 12-hour per day basis should have their hours reduced to an 8-hour per day basis. In

said agreement it was provided that any Award made with respect to hours of labor should become effective as of the first day of the month following the date of the filing of the Award made pursuant to said Agreement.

VII.

In accordance with said agreement, arbitration proceedings were had pursuant to said Railway Labor Act, and in such proceedings an Award was duly made governing the defendant herein and the members of said Union employed by it. Said Arbitration Award was filed in accordance with said agreement on October 31, 1927, and, by the terms of said agreement, said Award became effective as to hours of labor as of November 1, 1927. By the terms of said Award, all twelve hour watches (with some designated exceptions, as appears in the Award hereinafter set out in full), were abolished and it was declared that all men then working in certain positions on a 12-hour per day basis should thereafter work on an 8-hour per day basis, such men being hereinafter referred to as "said former 12-hour men". However, notwithstanding said agreement and Award made pursuant thereto, defendant continued to [70] employ "said former 12-hour men" in excess of eight hours per day, to-wit, on various watches averaging twelve hours per day, until on or about September 1, 1928. The words and figures of said Award are set out in full com-

mencing at line 11 of page two of Exhibit "A" hereinafter mentioned.

VIII.

Said Award was filed in the United States District Court for the Northern District of California, as provided for in said Railway Labor Act. Thereafter, to-wit, on November 9, 1927, said defendant filed in said Federal Court a petition to impeach said Award, which petition was dismissed by said Court by an Order dated February 9, 1928, which Order affirmed said Award. Thereafter, said carrier took an appeal from said Order to the Circuit Court of Appeals for the Ninth Circuit, which Court on August 20, 1928, affirmed said Order of said District Court.

IX.

Pending said appeal, to-wit, on May 19, 1928, the parties entered into an agreement whereunder the parties advanced the effective date of the 8-hour per day basis from said November 1, 1927, to March 1, 1928, and it was agreed that, if the order of said district court was affirmed, that the 8-hour day be put into effect for all of "said former 12-hour men" as of March 1, 1928. In the meanwhile and to and including on or about the 1st day of September, 1928, said carriers continued to employ all "said former 12-hour men" on daily watches averaging twelve hours per day notwithstanding said Award and said Agreement. Said Agreement entered into

on May 19, 1928, was signed by said unincorporated association on the one hand, as representing its members in [71] accordance with said Railway Labor Act, and by defendant herein and other interested carriers on the other hand.

X.

After the said Circuit Court of Appeals affirmed the order of the said District Court, said District Court on September 29, 1928, entered a judgment in accord with the terms of said Act, which judgment is set out in words and figures as Exhibit "A", which Exhibit "A" is annexed hereto and by this reference expressly incorporated as a part of this paragraph as if herein set out in full. Said judgment has not been modified in any way nor appealed from, and now is a final and subsisting judgment between the parties thereto.

XI.

Said judgment provided that the defendant herein and other interested carriers should observe the following rules as and from March 1, 1928:

> "Rule 6. Assigned crews will work on the basis of eight (8) hours or less on watch each day for six (6) consecutive days."
>
> "Rule 8. The monthly salary now paid the employes covered by this agreement shall cover the present recognized straight time assignment. All service hourage in excess of the

present recognized straight time assignment shall be paid for in addition to the monthly salary at the pro rata rate."

Said judgment also provided that the defendant herein shall

"* * * put said wages and rules into effect as of the effective dates above mentioned * * * and cause all of said employes to be paid all back pay retroactively or otherwise due to said employes or any of them in accordance with said award and this judgment."

Notwithstanding the agreement of the parties and the judgment based on said Award said carrier continued to employ "said former 12-hour men" on daily watches averaging in excess of 8 hours per [72] day, to-wit, on watches averaging 12 hours per day, until on or about September 1, 1928.

XII

During the period from and including March 1, 1928, to September 1, 1928, all of "said former 12-hour men" were employed each day in excess of 8 hours per day as fixed in said Award. The exact number of hours worked each day by each man in excess of 8 hours per day is not known to plaintiffs herein, but the same may be ascertained from the time cards and other records in the possession of defendant herein. The ascertainment of the exact amount due each man depends upon many computations and examinations of records, all of which will

be long and complicated and in regard to which plaintiffs require an accounting to be had by the parties.

The total amount now due, owing and unpaid for said overtime from defendant herein aggregates a sum in excess of Forty Thousand ($40,000) Dollars.

Notwithstanding "said former 12-hour men" have been employed in excess of the fixed hours per day as above alleged herein the over time due said men for the excess hourage has not been paid to said men or any of them, although demand has been made upon defendant for the payment of said overtime as required by said judgment.

XIII

a. The jurisdiction of this court arises out of the fact that this bill is ancillary to and by way of enforcement of a decree already rendered by this Court, and out of the further fact that this Court has inherent power to enforce its own decrees. Said decree was rendered on September 29, 1928, in a [73] proceeding in the equity division of this Court numbered "in Equity No. 1955-S" and entitled

> IN THE MATTER OF AN AWARD FILED HEREIN OCTOBER 31, 1927, pursuant to an arbitration held UNDER THE ACT OF CONGRESS known as the RAILWAY LABOR ACT, between The Atchison Topeka and Santa Fe Railway Company, North western Pacific Railroad Company, Southern

Pacific Company and The Western Pacific Railroad Company, as parties of the first part and certain employees thereof, represented by the Ferryboatmen's Union of California, as the party of the second part.

b. The jurisdiction is also supported by the fact that this is a suit arising out of a law regulating commerce, to-wit, the Railway Labor Act, and is a suit to enforce a judgment rendered pursuant to that Act.

c. In view of the fact that this suit is ancillary to a proceeding already before this Count (and of which the Court had jurisdiction and in which the decree hereinafter referred to was rendered) and in view of the further fact that this suit is one of the cases referred to in the provisions of Section 24 (Subdivision First) of the Judicial Code and Section 24 (Subdivision Eighth) of said Judicial Code, it is not necessary that the sum or value in controversy amount to any particular sum. However, the amount involved in this litigation and the sum in controversy is in excess of $3,000.00. exclusive of interest and costs.

d. Jurisdiction in equity of this suit is hereby asserted on the ground that the suit is ancillary to a proceeding now pending herein in equity, to-wit, the proceeding above referred to and numbered In Equity 1955-S, and that this is a suit to enforce a decree already rendered in equity in said proceeding in equity, and upon the further ground that the equitable remedy of accounting [74] is necessary

to give plaintiffs adequate relief and upon the further ground that plaintiff has no plain, speedy or adequate remedy at law. However, if plaintiffs be in error as to this, plaintiffs ask the Court by appropriate order to transfer this case to the law side of the Court.

e. Plaintiffs offer to do full and complete equity in the premises.

AND FOR A FURTHER SEPARATE AND SECOND CAUSE OF ACTION PLAINTIFFS ALLEGE AS FOLLOWS:

I.

Plaintiffs refer to all the allegations of the First Cause of Action above set forth and by this reference incorporate the same as a part of this Second Cause of Action to all intents and purposes as if set out herein in full.

II.

Prior to the filing of suit herein "said former 12-hour men" individually assigned and transferred to the members of said unincorporated association collectively (including C. W. DEAL, as one of said members) said judgment and all their individual rights, money and back pay due under said judgment. Said members, including said C. W. Deal, and said unincorporated association, prior to the filing of suit herein, transferred and assigned to the incorporated union, plaintiff herein, said judgment and individual rights, money and back pay due

thereunder and said incorporated union is now the owner of and the person entitled to collect all of said wages, moneys, rights and back pay overtime.

The names of the employees whose right, title and interest in and to said moneys and back pay due under said [75] judgment are now in the ownership of plaintiffs and who were employed by defendant Southern Pacific Company at all times herein mentioned, are set out in Exhibit "SP", which exhibit is annexed hereto and by this reference expressly incorporated as a part hereof, as if set out in full.

WHEREFORE, plaintiffs pray for judgment against defendant and relief as follows:

1. That an accounting be had and it be determined exactly how much is due from defendant on account of said overtime and back pay.

2. That the Court issue judgment, decree and execution for the amount found to be due.

3. That the court make such further orders as may be necessary to carry said judgment and award into effect.

4. That the Court make such further orders and decrees as may be meet and proper in the premises.

5. That plaintiffs have their costs of suit as may be meet and proper in the premises.

Dated: September 27, 1933.

DERBY, SHARP, QUINBY & TWEEDT

JOSEPH C. SHARP

Solicitors for Plaintiffs. [76]

State of California
City and County of San Francisco—ss.

C. W. DEAL, being first duly sworn, deposes and says: He is an officer, to-wit, Secretary of Ferryboatmen's Union of California, a corporation, one of the plaintiffs above named, and duly authorized to make this verification on its behalf; that he has read the foregoing Bill in Equity to Enforce Decree and knows the contents thereof and the same is true of his own knowledge, except as to the matters therein stated on information and belief, and to those matters he believes it to be true.

C. W. DEAL

Subscribed and sworn to before me this 27th day of September, 1933.

[Seal] KATHRYN E. STONE
Notary Public in and for the City and County of San Francisco, State of California. [77]

EXHIBIT "A"

[Title of Court and Cause—No. 1955.]

JUDGMENT ENTERED UPON ARBITRATION AWARD UNDER RAILWAY LABOR ACT

It appearing to the Court and Judge thereof from all the records, papers and files herein that a controversy having existed between the certain railroads above mentioned (hereinafter referred to as the carriers) and certain employees of said carriers, represented in these proceedings by the Ferryboatmen's Union of California above mentioned and,

It appearing further that the parties hereto have attempted to settle said controversy between them by submission to a Board of Arbitration in accordance with the provisions of the Act of Congress known as the Railway Labor Act, said submission being in accordance with a certain agreement to arbitrate on file herein, which agreement provides in part that any award of the Board as to wages shall become effective as of January 1, 1927, and as to other rules, that the award shall become effective as of the first day of the month following the date on which the [78] award is filed (which date of filing, as appears later herein, is October 31, 1927, and which therefore makes November 1, 1927, the effective date of such rules, except as hereby modified) said agreement being expressly incorporated as part of this judgment as if herein set out in full, and

It appearing further that said Board of Arbitration having met duly and regularly and having heard all the evidence and arguments offered by the respective parties and their counsel and said Board having duly and regularly made its Award in said Arbitration proceedings in accord with said Railway Labor Act and having so made and filed in this court said Award on October 31, 1927, which said Award reads in full as follows:

"AWARD AND DECISION

We, the undersigned, members of the Board of Arbitration, appointed under the provisions

of the Railway Labor Act of 1926 entitled 'An Act to Provide for the prompt disposition of disputes between carriers and their employes, and for other purposes', to arbitrate certain differences specified in an agreement to arbitrate, made and entered into the 7th day of January, 1927, between the Atchison, Topeka & Santa Fe Railway (Coast Lines); Northwestern Pacific Railroad Company; Southern Pacific Company (Pacific Lines); Western Pacific Railroad Company and the Ferryboatmen's Union of California, after full and careful consideration of the evidence submitted in the case, do hereby award and decide as follows regarding the specified differences:

Rates of Pay

Rule 2. Passenger and Car Ferries, and Tugs towing Car Floats

Firemen	$146.35	per month
Deckhands	$139.40	per month
Cabin Watchmen	$139.40	" "
Night Watchmen	$120.00	" "
Matrons	$ 85.00	" "
Fire Boats:		
Firemen	$ 97.57	" "
Deckhands	$ 92.94	" "

Hours of Service

Rule 6.

Assigned crews will work on the basis of eight (8) hours or less on watch each day for six (6) consecutive days.

Exceptions:

(1) On boats with two crews, watches may be separated by an interval of time. [79]

(2) Extra crews may be used on any day it is found necessary to operate one or two crewed boats beyond assigned hours of regular crews.

(3) Where three crews are used, watches may be as long as eight (8) hours and forty (40) minutes, provided the combined watches do not exceed twenty-four (24) hours and no crew works over forty-eight (48) hours in six (6) consecutive days.

(4) Where two crews are used, watches may be as long as eight (8) hours and forty (40) minutes, provided the combined watches do not exceed sixteen (16) hours and no crew works over forty-eight (48) hours in six (6) consecutive days.

(5) On boats operating out of Vallejo Junction crews may be assigned twelve (12) hours per day and not to exceed forty-eight (48) hours per week.

(6) On one and two crewed tugs towing car floats crews may be worked not to exceed (9) hours and twenty (20) minutes per watch.

(7) On three crewed tugs, towing car floats and car ferries, except on Carquinez Straits,

crews may be assigned twelve (12) hours on watch with twenty-four (24) hours off watch, provided such assigned watches average forty-eight (48) hours per week within the time required to bring it about.

(8) On Fire Boats, crews will work twenty-four (24) hours on and then twenty-four (24) off without pay for time off.

(9) Limit any where provided on length of watches does not apply in emergency or when necessary to make extra trips to handle heavy volume of traffic which cannot be handled on schedule trips.

(10) Watches on three crewed boats shall not begin or terminate between (1) A.M. and six (6) A.M.

(11) Employes required to operate boats to and from yard shall be paid regular run rates.

(12) Night Watchmen may be assigned on twelve (12) hour watches four (4) days per week.

Overtime

Rule 8.

The monthly salary now paid the employes covered by this agreement shall cover the present recognized straight time assignment. All service hourage in excess of the present recognized straight time assignment shall be paid

for in addition to the monthly salary at the pro rata rate. [80]

(Signed) CHAS. D. MARX
Chairman
(Signed) W. H. YOUNG
(Signed) LOUIS BLOCH
(Signed) JAMES L. DUNN

We dissent:

(Signed) F. L. BURCKHALTER
(Signed) J. A. CHRISTIE"

Dated at San Francisco on the 31st., day of October, 1927.

And it appearing further than on November 9, 1927, said carriers filed a petition to impeach said Award and that on February 9, 1928, an order was duly made and entered by this Court confirming said Award and dismissing said petition to impeach said Award and,

It appearing further said carriers took an appeal from said Order and Decision of the District Court to the United States Circuit Court of Appeals for the Ninth Circuit, which court on August 20, 1928, affirmed said order and decision of said District Court confirming said Award and dismissing said petition to impeach the same, and

It appearing further that on May 19, 1928, the parties hereto entered into a stipulation which was filed herein on May 22, 1928, reading in part as follows:

"1. That the ten dollars ($10.00) per month increase made by said award is to be put into

effect and paid beginning May 1, 1928, and is to remain in effect until April 1, 1929, and thereafter subject to the 30-day provision in the existing contracts between the Ferryboatmen's Union of California and the respective carriers, copies of which contracts are exhibits in this case and are on file in the records of this Court.

2. That the $10.00 per month increase is to be retroactively paid to January 1, 1927; payment of such retroactive increase is to be made to the employees in service during all or any part of the period from and including January 1, 1927, to and including April 30, 1928, as early as practicable and not later than June 15, 1928.

3. That if the above entitled Circuit Court of Appeals affirms the decree confirming the award the retroactive date of the new watch rules which are a part of that award shall [81] be advanced from November 1, 1927, to March 1, 1928.

4. On the coming down of the remittitur or mandate from the Circuit Court of Appeals to the District Court the judgment of the District Court shall incorporate and confirm the terms of this stipulation irrespective of whether said Circuit Court of Appeals affirms or reverses the judgment and order of the District Court heretofore rendered herein."

And it appearing further that the determination of said Circuit Court of Appeals affirming said ap-

peal having been duly certified by the Clerk of said Court to this Court and that on September 20, 1928, the mandate of said Circuit Court of Appeal was duly issued and forwarded to the Clerk of this Court and filed herein and it being provided in the Railway Labor Act as as follows:

> "The determination of said Circuit Court of Appeals upon said question shall be final and being certified by the Clerk thereof to said District Court, judgment pursuant thereto shall thereupon be entered by said District Court."

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Award of the Board of Arbitration hereinbefore set forth dated October 31, 1927, and filed in this court on said date (as modified by said stipulation) be and the same hereby is confirmed and entered as a judgment of this court and, in accordance with the above,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that subject to the thirty (30) day provision in existing contracts between the said Ferryboatmen's Union of California and respective carriers and subject to the terms of said arbitration agreement, the rates of pay fixed by said award (and therein denominated Rule 2) shall become effective as of January 1, 1927, and as and from said date (until modified as in said contracts and agreement provided) said carriers and each of them shall pay said employees the following wages: [82]

Passenger and Car Ferries, and Tugs Towing Car Floats:

Firemen	$146.35	per month
Deckhands	$139.40	" "
Cabin Watchmen	$139.40	" "
Night Watchmen	$120.00	" "
Matrons	$ 85.00	" "

Fire Boats:

Firemen	$ 97.57	" "
Deckhands	$ 92.94	" "

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that (subject also to all of said contracts and agreement) the rule pertaining to hours of service (and in said Award denominated as Rule 6) as re-written in said Award shall become effective as and from March 1, 1928, and as and from said date (until modified as in said contracts and agreement provided) said carriers and each of them shall observe and put into effect said Rule 6 as set out in said award and reading follows:

"Hours of Service

Rule 6.

Assigned crews will work on the basis of eight (8) hours or less on watch each day for six (6) consecutive days.

Exceptions:

(1) On boats with two crews, watches may be separated by an interval of time.

(2) Extra crews may be used on any day it

is found necessary to operate one or two crewed boats beyond assigned hours of regular crews.

(3) Where three crews are used, watches may be as long as eight (8) hours and forty (40) minutes, provided the combined watches do not exceed twenty-four (24) hours and no crew works over forty-eight (48) hours in six (6) consecutive days.

(4) Where two crews are used, watches may be as long as eight (8) hours and forty (40) minutes, provided the combined watches do not exceed sixteen (16) hours and no crew works over forty-eight (48) hours in six (6) consecutive days. [83]

(5) On boats operating out of Vallejo Junction crews may be assigned twelve (12) hours per day and not to exceed forty-eight (48) hours per week.

(6) On one and two crewed tugs towing car floats crews may be worked not to exceed nine (9) hours and twenty (20) minutes per watch.

(7) On three crewed tugs, towing car floats and car ferries, except on Carquinez Straits, crews may be assigned twelve (12) hours on watch with twenty-four (24) hours off watch, provided such assigned watches average forty-eight (48) hours per week within the time required to bring it about.

(8) On Fire Boats, crews will work twenty-four (24) hours on and then twenty-four (24) off without pay for time off.

(9) Limit any where provided on length of watches does not apply in emergency or when necessary to make extra trips to handle heavy volume of traffic which cannot be handled on schedule trips.

(10) Watches on three crewed boats shall not begin or terminate between (1) A. M. and six (6) A. M.

(11) Employes required to operate boats to and from yard shall be paid regular run rates.

(12) Night Watchmen may be assigned on twelve (12) hour watches four (4) days per week."

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the rule pertaining to wages for overtime (denominated in said award as Rule 8) shall, as and from January 1, 1927 (and subject to said contracts and agreement) read as in said award set out, and said carriers and each of them shall observe and put into effect said Rule 8 as so set out (until modified as in said contracts and agreement provided) and shall pay all overtime due or to become due in accordance with said Rule 8, said rule reading as follows:

"Overtime

Rule 8.

The monthly salary now paid the employes covered by this agreement shall cover the present recognized straight time assignment. All service hourage in excess [84] of the present

recognized straight time assignment shall be paid for in addition to the monthly salary at the prorate rate."

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the above named carriers and each of them shall, through their respective proper officers, agents, superintendents and employees make such orders and issue such instructions as will put said wages and rules into effect as of the effective dates above mentioned, (and thereafter until changed as in said contracts and agreement provided) and as will cause all of said employees to be paid all back pay retroactively or otherwise due to said employees or any of them in accordance with said award and this judgment, and respondent shall have its costs herein as taxes in the sum of................................ Dollars.

Dated: San Francisco, California. Sept. 29, 1928.

A. F. ST. SURE
District Judge. [85]

EXHIBIT "SP"

Firemen

1. Anderson, Carl J.
2. Anderson, Conrad
3. Braumiller, Emil
4. Brennan, J. J.
5. Bunatos, Tom
6. Catcher, M. R.
6a. Chalmers, Alex (120)
7. Costa, A. L.
8. Crandell, Horace L.
9. Cummins, Tom
10. Curtis, Gilbert E.
11. Daniloff, Nicholas
12. Davidson, George
13. Dineen, Michael

Firemen—(continued)

14. Dion, David
15. Domingoes, Joseph R.
16. Dunn, James N.
17. Edwards, Zene M.
18. Eide, Hans
19. Enos, John
20. Esteller, Joaquin
21. Fernandez, Roger
22. Fernandez, Y.
23. Fitzgerald, M. J.
24. Foss, Reidar
25. Gallagher, Cornelius
26. Gardner, Robert E.
27. Gluch, Sam
28. Gonzales, Raymond
29. Hagberg, N. A.
29a. Hanson, Nils O. (167)
30. Harner, Hoyt I.
31. Hartley, Arthur C.
32. Hayden, John J.
33. Heineman, Fred S.
34. Holland, Michael
35. Hooper, Robert L.
36. Hope, Finn
37. Hosier, Leon
38. Ives, Claude La Vaughn
39. Johansen, Adolph
39a. Karsten, Herbert (183)
40. Kennedy, Louis J.
41. Kennedy, Samuel
42. Klemmick, Alfred H.
43. Knoblanch, A. J.
44. Lally, John
45. Lally, Martin F. (191a)
46. Leimer, Louis J.
47. Leland, Earl
48. Linchan, James L.
49. Linhares, Joe
50. Lopes, John P.
51. Lyons, Joseph E.
52. Malcomson, John
53. Mardis, Louis
54. McGue, James
55. McIntyre, A. B.
56. Murray, Robert E.
57. Nissen, James A.
58. Noake, George
59. Olson, Nils
60. Oyarzo, Edwin M.
61. Perry, M.
62. Perry, Manuel
62a. Phillips, Eugene T. (247)
63. Price, Fred M.
64. Price, Lloyd
65. Pritchard, Charles
66. Rahill, Walter
67. Ransom, R. B.
68. Rico, E.
69. Roberts, Hubert A.
70. Rowland, Lusky
71. Sancken, Louis
72. Scholl, Joseph A.
73. Sliscovich, John J.
74. Stanford, S. B.
75. Stein, Frank
75a. Thomas, John J. (285)
76. Tinker, L. C.
77. Van Ansdall, L. W.
78. Wall, Phil E.
79. Wemmer, Edwin
80. Wendelbro, Fred M.
81. White, Henry F.
82. Wilkinson, Geo.
83. Wolslegel, Erwin [86]

EXHIBIT "SP"

Deckhands

84. Akimoff, Viacheslav
85. Algrava, Peter
86. Alves, Edwin V.
87. Anderson, C. W.
88. Anderson, Carl I.
89. Anderson, Lloyd L.
90. Avelar, Antonio
91. Avelino, Walter
92. Babb, Dmpsey E.
93. Ballard, Cecil J.
94. Banks, Frank J.
95. Barrett, Edward B.
96. Barton, Emery V.
97. Batchelder, James
98. Batchelder, Lawrence
99. Bennett, Ernest C.
100. Benson, Albert R.
101. Berger, Adolph L.
102. Bertao, John
103. Bertolani, Sebastiano
104. Bettencourt, Carmel
105. Bird, Herbert C.
106. Borges, George C.
107. Botzer, Max F.
108. Bradley, James
109. Bradley, Joseph
110. Braga, J. R.
111. Braz, Joseph
112. Brickey, John A.
113. Brosnan, Denis
114. Bruce, Chas. L.
115. Burgstrom, Albert C.
116. Cannistra, Antonio
117. Capello, John F.
118. Castro, Antone
119. Cepo, Joseph
120. Chalmers, Alex (6a)
121. Coelho, Manuel
122. Collosi, Angelo
123. Conroy, Thomas J.
124. Correia, John R.
125. Correia, Raymond A.
126. Correia, Raymond C.
127. Corvello, Alfred
128. Cory, Edmund K.
129. Costanho, John
130. Dalke, Chas.
131. Dalke, Jake
132. Danberg, Karl F.
133. Delmore, James A.
134. Dewerd, Adrian J.
135. Dias, C. J.
136. Durkee, Ralph A.
137. Eastman, Gus
138. Edgerton, Clark
139. Edwards, Bert E.
140. Ervin, Henry A.
141. Evenson, John E.
142. Everett, Charles
143. Fernandez, Julius
144. Fernandez, V. A.
145. Ferriera, Jesse K.
146. Foley, Martin
147. Foster, Charles
148. Freitas, John
149. Freitas, John C.
150. Freitas, Thomas
151. Friebe, Erwin
152. Friedrichs, Gus
153. George, Peter S.
154. Goncalves, Joseph F.
155. Gosch, Emil E.
156. Green, Charles
157. Green, George
158. Griffin, Edw.
159. Gruzdeff, J. E.
160. Gunderson, Trygve
161. Hall, James T.
162. Hand, Edward
163. Hansen, Chris. M.
164. Hansen, Hans K.
165. Hansen, Hans P.

166. Hansen, Victor
167. Hanson, Nils O. (29a)
168. Harper, Joseph L.
169. Hendricks, Henry C.
170. Henriques Fancisco P.
171. Hitchcock, Henry
172. Horacek, Joseph
173. Hughes, Albert G.
174. Ignacio, Manuel F.
175. Iversen, Harold
176. Iversen, Johan I.
177. Jerome, Manuel
178. Jogoleff, Peter
178a. Joaquin, M. (NWP 19)
179. Johansen, Hans T.
180. Johnson, E.
181. Johnson, Halvor
182. Jones, Albert H.
183. Karsten, Herbert (39a)
184. Kayser, George H.
185. Kientz, Arch L.
186. King, F. G.
187. King, Vaughn M.
188. Knutsen, John L.
189. Kristensen, John M.
190. Kritsky, Dimitry D.
191. Laine, Andrew
191a. Lally, Martin F. (45)
192. Lamoureaux, Eugene
193. Larsen, John [87]
194. Lerch, Adalbert R.
195. Levenhenko, Theo.
196. Levine, E.
197. Lomba, Charles Q.
198. Lomba, John Q.
199. Lombard, Henry V.
200. Lopes, John
201. Lueboke, Elmer
202. Lukas, Joe
203. Marks, Joseph R.
204. Marshall, J. J.
205. Martin, John
206. Mason, Sydney B.
207. Massey, Cornelius
208. Mattias, Jose M.
209. Mathisen, Anton
210. McCartan, Chas.
211. McCarthy, Michael
212. McNamara, John E.
213. Messer, Allen R.
214. Meyer, John C.
215. Miller, Antone F.
216. Moniz, Antone P.
217. Moniz, Antonio
218. Moniz, Joe
219. Moran, John P.
220. Morris, Chas. C.
221. Morrison, Roscoe
222. Moyer, John
223. Murphy, Peter B.
224. Nadjaf, Aslan
225. Naro, Joseph
226. Nelson, Victor
227. Nielsen, Harold E.
228. Nilsson, Martin
229. Noonan, Wm.
230. Oldham, Albert E.
231. Ollino, Carlo
232. Olsen, Arthur A.
233. Olsen, Harold A.
234. Olsen, Sverre K.
235. Olson, Erick G.
236. Olson, Ole
237. O'Neill, Michael
238. Oupe, Paul
239. Park, Henry T.
240. Parke, Wm. L.
241. Paulino, Manuel
242. Paulsen, W. B.
243. Penney, Lester E.
244. Perry, A. A.
245. Perry, Frank J.

EXHIBIT "SP"

Deckhands (continued)

245a. Perry, M. (61)
246. Perry, Ray J.
247. Phillips, Eugene T. (62a)
248. Pimentel, Joe
249. Popoff, Nicholas N.
250. Puhar, Joseph
251. Quirk, George
252. Raynor, Robert G.
253. Reilly, Francis J.
254. Ritchie, George
255. Rogers, Manuel G.
256. Rose, Jesse
257. Routery, Harold
258. Rubanow, K.
259. Samuelson, John
260. Santos, K. R.
261. Sargent, Sydney
262. Schurr, John K.
263. Seitz, Max A.
264. Serpa, Frank
265. Sevan, Alton
266. Sherrill, H. D.
267. Sherrill, Worth C.
268. Simpson, Frank
269. Smetanin, Alexander
270. Smetanin, Victor
271. Smith, Edward
272. Smith, James J.
273. Smyth, Leo
274. Soltan, Manuel G.
275. Souza, Antone F.
276. Souza, A. P.
277. Souza, John M.
278. Stangeland, Jacob
279. Stevenson, V. J.
280. Stillings, Eugene
281. Swanson, Arthur
282. Swanson, Harry
283. Swiers, Henry
284. Theohares, N.
285. Thomas, John J. (75a)
286. Thompson, Fay
287. Thomassen, Thomas G.
288. Tomkinson, Ernest
289. Triguero, Antone
290. Trigueiro, M. F.
291. Ushanoff, Basil
292. Valladao, A. A.
293. Vargas, John A.
294. Vlasich, L.
295. Ward, Fred
296. Weaver, Wm.
297. Wilkman, Charles
298. Williams, Wm.
299. Wilson, Dudley
300. Young, Peter
301. Zachary, Alex.

Watchman

302. Gundina, Chas. W.

[Endorsed]: Filed Sep. 27, 1933. [88]

[Title of Court and Cause No. 3635-S.]

ANSWER OF DEFENDANT SOUTHERN PACIFIC COMPANY

Comes now Southern Pacific Company, defendant, not waiving, but expressly reserving all objections heretofore made to plaintiff's "Bill in Equity to Enforce Decree", by its Notice of Motion to Require Plaintiffs to Elect, and by its Notice of Motion to Dismiss said Bill, and answering said Bill, admits, denies and avers as follows:

I

Answering Paragraph I of said Bill of Plaintiffs' First Cause of Action, defendant admits the allegation of said paragraph insofar as it relates to Ferryboatmen's Union of California, an unincorporated association, but defendant has neither knowledge, information nor belief on the subject and therefore denies that on October 2, 1931, said unincorporated association transferred or assigned to said Ferryboatmen's Union of California, a non profit corporation, all of its rights or interest in the decree [89] herein mentioned.

II.

This defendant admits the allegations of Paragraph II of said Bill.

III.

Answering Paragraph III of said Bill, this defendant admits that at all times mentioned herein said unincorporated association constituted a labor

union, as therein stated, but defendant has neither knowledge, information nor belief on the subject to enable it to answer, and therefore denies that said incorporated union was, or now is, the duly designated and acting representative of said employes as defined or provided for in the Railway Labor Act heretofore enacted by the Congress of the United States or was or is the duly designated and acting representative of "certain employes" referred to in the above-mentioned proceeding.

IV.

Answering Paragraph IV of said Bill, this defendant admits that it was, and still is, a carrier, as the same is defined in said Railway Labor Act, and was, and still is, an interstate carrier, subject to the provisions of said Act, but denies that at all of any of said times the members of said union, both unincorporated and incorporated, were employes as the same are defined in said act.

V.

Answering Paragraph V of said Bill, this defendant denies that in the year 1925 said employes, as represented by said union, agreed in writing with this defendant as to what wages or working conditions should govern employes, but admits that in the year 1925 it entered into an agreement in writing with said Ferryboatmen's Union of California, an unincorporated association, as to wages and working conditions, and alleges that a copy of said

agreement is attached hereto, marked Exhibit "A", and made a part [90] hereof. On its information and belief this defendant alleges that said agreement is the agreement referred to by plaintiff in Paragraph V of said Bill. This defendant denies that said agreement or writing, or any other agreement or writing with said unincorporated association or incorporated association or union as representative of any employes, contained any terms or provisions other than those shown in the said agreement, a copy of which is Exhibit "A" hereto. Defendant further alleges that said agreement marked Exhibit "A" is the only agreement, written or oral, that ever existed between this defendant and said unincorporated association, or any other association and/or said employes referred to in plaintiff's Exhibit "S.P." and made part of said Bill, and denies that any agreement, or agreements, or understanding between said union, incorporated or unincorporated, or any of said employes, provided that any employe should be paid for overtime in addition to said monthly salary, said overtime to be on an hourly wage basis ascertained by pro-rating the regular monthly salary by the number of hours straight time fixed by his position in said agreement, but on the other hand, alleges that all of the terms and conditions governing working hours, monthly salary, overtime or hourly wage were fixed by agreement attached (Exhibit "A" hereto).

VI.

Answering Paragraph VI of said Bill, this defendant admits:

(1) That in the year 1927 a controversy arose and existed between it and its said employes represented by said Ferryboatmen's Union, an unincorporated association; but alleges that said controversy was a dispute between the defendant and said employes not settled in conference between them in respect to changes in rates of pay, rules or working conditions, which changes were desired by the Ferryboatmen's Union, an unincorporated association, on behalf of said employes, and were not [91] agreeable to, or desired by this defendant;

(2) This defendant avers that said dispute was a dispute as defined in Section 5 of said Railway Labor Act, and particularly Subdivision (b) thereof;

(3) This defendant avers that contemporaneously with this controversy and dispute, a similar controversy and dispute existed between the employes of The Western Pacific Railroad Company, the Atchison, Topeka and Santa Fe Railway Company and Northwestern Pacific Railroad Company, and alleges that in such dispute said employes were represented by said Ferryboatmen's Union, an unincorporated association, and in connection with said disputes this defendant alleges that on the 7th day of January, 1927, an agreement was entered into between all of said companies, including this defendant, and their employes, known as marine

firemen, deckhands, cabin watchmen, night watchmen and matrons, employes in the service of each of said companies, or some of them, and represented by Ferryboatmen's Union of California, an unincorporated association, and that said agreement was entered into between said parties as provided in section 7 of said Railway Labor Act. A copy of said agreement is hereunto attached, marked Exhibit "B" and made a part hereof.

And further answering Paragraph VI of said Bill, this defendant alleges that said Exhibit "B" is a copy of the only agreement to arbitrate ever entered into under said Railway Labor Act between this defendant and its employes herein referred to, and represented by said unincorporated association as to any issue tendered by said Bill in Equity.

VII.

Answering Paragraph VII of said Bill, this defendant admits:

(1) That arbitration proceedings in accordance with said agreement were had under the provisions of and pursuant to said [92] Railway Labor Act, and admits in such proceedings an award was duly made governing the defendant herein and the members of said Ferryboatmen's Union of California, an unincorporated association;

(2) This defendant admits that said arbitration award was filed in accordance with said agreement on October 31, 1927, and by the terms of said agreement said award became effective as of No-

vember 1, 1927; but denies that it became effective as to hours of labor only, as of November 1, 1927. This defendant alleges that said arbitration award is as set forth in the judgment, a copy of which is attached as Exhibit "A" to plaintiffs' Bill in Equity. This defendant denies that said award contained any terms or declarations other than those appearing in the copy thereof set forth in said Exhibit "A", attached to said Bill.

(3) Further answering Paragraph VII, defendant denies that it continued at any time to employ "said former 12-hour men", or any other men, or employes, in excess of eight hours per day or on various watches averaging 12 hours per day until on or about September 1, 1928, and hereby alleges that it from time-to-time continued in employment in the same capacities certain employes, including plaintiffs' assignors, who had formerly and prior to said arbitration agreement been employed as so-called "12-hour men", and so continued them upon the same basis or hours of service and on the same regular, assigned watches as they and all of the so-called "former 12-hour men" had been employed prior to said arbitration agreement; that the hours of their employment were as follows: 12 hours on watch followed by 24 hours off watch and off duty, followed by 12 hours on watch and on duty, alternating in 12 hours on duty and 24 hours off duty, thus making their hours of service in the aggregate an average of 56 hours per

week (as "Week" is hereinafter defined) in a continuous 12-24 hour service of three weeks. [93]

By "day" as used in this answer is meant the 24 hours next succeeding the beginning of a duty period on watch worked by an employe.

By "week" as used in this Answer, unless from the context a different meaning appears, is meant seven consecutive periods of time of 24 hours each.

VIII.

This defendant admits the averments of Paragraph VIII of said Bill.

IX.

Answering Paragraph IX of said Bill, defendant denies that the parties entered into an agreement, or any agreement, on May 19, 1928; but alleges that on May 19, 1928, an agreement was entered into between said unincorporated association and defendant, together with Northwestern Pacific Railroad Company, Atchison, Topeka and Santa Fe Railway Company and Western Pacific Railroad Company, which was embodied in a stipulation filed in this Court, and alleges that the operative portions of said stipulation are set forth in the copy of said judgment, attached to said Bill, and marked Exhibit "A".

Further answering said Paragraph IX, this defendant denies to and/or including, or on or about the first day of September, 1928, or at any time, it continued to employ all of the "said former

12-hour men" on daily watches averaging 12 hours per day, or any daily watches of any average hours whatever, notwithstanding said award or said agreement, but in this behalf avers that following the signing of said arbitration agreement defendant continued to employ some of the "said former 12-hour men" on regular, assigned watches averaging 56 hours per week in a spread of three consecutive weeks, and the employment of said [94] employes was in alternating periods of 12 hours on duty or "on watch" and 24 hours off duty, or "off watch".

This defendant further alleges that said employment was not within any of the ten exceptions to Rule 6 of said Agreement (Exhibit "A" hereto), nor was it within any of the 12 exceptions under said Rule 6 as amended by said award, but that it was merely a continuation of the watches and watch hours prescribed under, and designated as "(a) Rule 6" of said agreement as it stood prior to January 1, 1927, and as shown in Exhibit "A" hereto.

Further answering Paragraph IX, defendant admits that said agreement entered into on May 19, 1928 was signed as alleged therein.

X.

This defendant admits the allegations of Paragraph X of said Bill.

XI.

Answering Paragraph XI of said Bill, this defendant admits the allegations thereof insofar as said paragraph quotes the rules set out in said judgment, but specifically denies that notwithstanding the agreement of the parties or the judgment based on said award, this defendant continued to employ "said former 12-hour men" on daily watches averaging in excess of 8 hours per day—to-wit: on watches averaging 12 hours per day, or until on or about September 1, 1928, and denies that "said former 12-hour men" were employed other than as indicated herein, but in this behalf alleges that certain of said "former 12-hour men" were employed on regular assigned watches for a period of 12 hours, then were off duty 24 hours or more, and that at none of the times mentioned herein were said certain men employed daily, or more than 56 hours per week as "week" is defined herein. [95]

XII.

Answering Paragraph XII of said Bill, this defendant denies that during the period from and including March 1, 1928 to and including September 1, 1928 all of the "said former 12-hour men" were employed each day in excess of eight hours per day, as fixed in said award, and denies that "said former 12-hour men" were employed otherwise than as herein alleged.

Further answering said Paragraph XII, this defendant denies that the exact number of hours worked each day by each man for this defendant in excess of eight hours per day is not known to plaintiffs herein, but admits that the same may be ascertained from the time cards and/or other records in the possession of this defendant. Defendant further denies that the ascertainment of the exact amount due each man depends upon many computations or examinations of records, all of which will be long and complicated, or long or complicated, and in that behalf this defendant alleges that no accounting is necessary to be had by the parties; that defendant has already furnished to said plaintiffs the exact hours worked each day by each man in excess of eight hours per day between March 1, 1928 to September 1, 1928.

Further answering said Paragraph XII, this defendant denies that notwithstanding "said former 12-hour men" have been employed in excess of the fixed hours per day as in said Bill alleged, the overtime due said men for the alleged excess hourage has not been paid to said men, or any of them, but on the other hand alleges that this defendant, prior to January 1, 1929, paid all of its said employes, designated as "said former 12-hour men" all of the amounts due them under said agreement, award, stipulation and judgment mentioned herein for overtime or on any other account, and further denies that the total amount now due, owing

or unpaid for said overtime from defendant herein aggregates [96] a sum in excess of Forty Thousand Dollars ($40,000.00) or any other sum at all.

XIII.

Answering (a) of Paragraph XIII of said Bill, this defendant denies that the jurisdiction of this Court arises out of the fact that this bill is ancillary to or by way of enforcement of a decree, or any decree, already rendered by this Court herein, or out of the further fact that this Court has inherent power to enforce its own decrees. This defendant admits that said decree was rendered on September 29, 1928.

Answering (b) of Paragraph XIII of said Bill, this defendant denies that this jurisdiction is also supported, or supported at all, by the fact that this proceeding arises out of the law regulating commerce, to-wit: The Railway Labor Act, and defendant specifically denies that this is a suit to enforce a judgment rendered pursuant to that Act, or any act, or any law regulating commerce, or otherwise, or at all.

Answering (c) of Paragraph XIII of said Bill, this defendant denies that this suit is ancillary to a proceeding already before this Court, or of which this Court has jurisdiction, and denies that this suit is one of the cases referred to in the provisions of Section 24 (Subdivision "first") of the Judicial Code or Section 24 (Subdivision "eighth") of said Judicial Code, and denies that the amount involved

in this litigation or the sum in controversy is in excess of Three Thousand Dollars ($3,000.00), exclusive of interest and costs, or any other sum at all.

In this connection defendant avers that any and all relief to which plaintiff is entitled lies solely within the provisions of the Railway Labor Act herein referred to.

Answering (d) of Paragraph XIII of said Bill, this [97] defendant denies that the suit is ancillary to a proceeding now pending herein in equity, to-wit: the proceeding above referred to, or numbered In Equity 1955-S, or that this is a suit to enforce a decree already rendered in equity in said proceeding in equity or upon the further ground that the equitable remedy of accounting is necessary to give plaintiffs adequate relief or upon the further ground that plaintiffs have no plain, speedy or adequate remedy at law.

Further answering (d) of said paragraph, this defendant alleges that plaintiffs had at all times herein mentioned, and now have, a plain, speedy and adequate remedy under the provisions of the Railway Labor Act herein referred to.

ANSWERING PLAINTIFFS' SECOND CAUSE OF ACTION, AS SET FORTH IN SAID BILL IN EQUITY TO ENFORCE DECREE, THIS DEFENDANT ADMITS, DENIES AND AVERS AS FOLLOWS:

I.

Defendant refers to all of the admissions, denials and averments set forth in its foregoing Answer

to plaintiffs' First Cause of Action, and by this reference incorporates the same as a part of its defense to plaintiffs' Second Cause of Action to all intents and purposes as if set out herein in full.

II.

Defendant has no knowledge, information or belief upon the subject sufficient to enable it to answer, and therefore denies that prior to the filing of suit herein "said former 12-hour men" individually assigned or transferred to the members of said unincorporated association, collectively, including C. W. Deal as one of said members, said judgment or [98] any judgment, or of their individual rights or money, or backpay alleged to be due under said judgment, and denies that said members, including said C. W. Deal or said unincorporated association, prior to the filing of suit herein or at any other time, or at all, transferred or assigned to the said unincorporated union, plaintiff herein, said judgment or individual rights or money or back-pay due thereunder, or at all, and denies that said unincorporated union is now the owner of or the person entitled to collect all of said wages, money, rights or back-pay overtime.

Defendant denies that the names of the employes whose right, title or interest in or to said moneys or back-pay alleged to be due under said judgment are no in the ownership of plaintiffs, but admits that all of the employes whose names are set out in Exhibit "S. P." were at all times mentioned

herein employes of Southern Pacific Company, defendant herein, and denies that said incorporated union is now the owner of, or the person entitled to collect all of said wages, moneys, rights or back-pay overtime.

AND FOR A SECOND, FURTHER AND SEPARATE DEFENSE to each of plaintiffs' causes of action stated and alleged against defendant Southern Pacific Company in said Bill in Equity, this defendant states:

(a) That during the years 1927, 1928 and 1929, and prior thereto, the Ferryboatmen's Union of California was a labor union and an unincorporated association of firemen, deckhands, cabin watchmen and night watchmen embracing within its membership a substantial majority of the employes engaged in such occupations on San Francisco Bay and its tributaries and employed by this defendant in such capacities, and also embracing within its membership a substantial majority of all of said classes of employes so employed by the Atchison, Topeka & Santa Fe Railway [99] Company, Western Pacific Railroad Company and Northwestern Pacific Railroad Company:

(b) That ever since prior to the passage and effective date of the Act of Congress of May 20, 1926, 44 Stats. at L., p. 577 (U. S. Code, Supp. II, Title 45, Secs. 151, et seq.) known as the Railway Labor Act, this defendant has been and now is a corporation duly organized and existing under the laws

of the State of Kentucky and a carrier as defined in paragraph "first", Section 1, of said Railway Labor Act, and each employe of this defendant, whether a member of said association or of the plaintiffs or not, but who has been since the passage of said Railway Labor Act employed by this defendant in the classes of occupations above described by name, is and has been an employe as defined in Subdivision "Fifth" of said Section One of said Railway Labor Act.

(c) During all of the years 1927, 1928 and 1929, said unincorporated association, Ferrybatmen's Union of California, by and through its Secretary and Manager, C. W. Deal, was the representative for the purposes of said Railway Labor Act designated as such by the constituent members of said unincorporated association as provided by its articles of association or by-laws and was such representative as defined in Subdivision "third" of Section Two of said Railway Labor Act.

(d) On the 7th day of January, 1927, a dispute, as defined in Subdivision "fifth" of Section Two of said Railway Labor Act existed between Northwestern Pacific Railroad Company, Atchison, Topeka and Santa Fe Railway Company, Western Pacific Railroad Company, this defendant and certain of their employes of said classes represented by said unincorporated association concerning changes desired by them in rates of pay, rules and working conditions, and said dispute was of the character

referred to in Subdivision "fifth" of Section Two of said Railway Labor Act. It appearing impossible to settle said dispute by mutual agreement, [100] such proceedings were had in conformity with the provisions of said Railway Labor Act—and not otherwise—so that an agreement to arbitrate said dispute was entered into between said parties, on the one hand, and said unincorporated association on the other, pursuant to the provisions of Section Eight of said Railway Labor Act, said agreement also including similar but separable and distinct controversies and disputes cognizable and adjustable under the provisions of said Railway Labor Act, and between said unincorporated association and each of said parties who had agreements with said unincorporated association similar to and for the same purpose as this defendant's agreement hereinafter referred to and a copy of which is attached to this answer as Exhibit "A".

(e) At the time of said dispute which gave rise to said arbitration agreement, the rates of pay, hours and working conditions of the members of said unincorporated association who were so employed by this defendant were governed exclusively by the provisions of a written agreement with this defendant, a copy of which is attached to this Answer, marked Exhibit "A" and made a part hereof, said agreement remained in force and was not modified superseded or set aside thereafter except by the arbitration award hereinafter referred to, the judgment of the United States District Court for the

Northern District of California confirming said award and hereinafter referred to, and the stipulation or agreement of May 19, 1928, the operative portions of which are set forth in said judgment. Nor since the entry of said judgment on said award, which entry was on the 29th day of September, 1928, has there been any modification of or change in said judgment, award, stipulation or Agreement (Exhibit "AA" attached hereto) except as said stipulation and/or judgment have or has the effect of working a modification of or amendments to said agreement (Exhibit "A" attached hereto).

(f) Said agreement to arbitrate was dated January 7, 1927, [101] and a copy thereof is attached to this Answer, marked Exhibit "B" and made a part hereof. Following the execution of said Agreement to arbitrate, the Board of Arbitration appointed thereunder, pursuant to the provisions of said Railway Labor Act to arbitrate the differences specified in said agreement, took testimony and heard arguments and did, in the 31st day of October, 1927, make its award and decision, a copy of which is contained in the judgment of said United States District Court of September 29, 1928.

(g) Said arbitration award was filed pursuant to the provisions of said Railway Labor Act and in accordance with said agreement on October 31, 1927, and on November 9, 1927 the defendant to this action, as party to said agreement to arbitrate and to said award, filed in the United States District Court for the Northern District of California, pursuant

to the provisions of Section Nine of said Railway Labor Act, a petition to impeach said award on each of the grounds (a), (b), and (c) mentioned in Subdivision "third" of said Section Nine of said Railway Labor Act, but said petition did not allege, nor was it stated as a ground for impeachment, that said award was invalid for uncertainty. Thereafter, to-wit, on the 9th day of February, 1928, said United States District Court entered an order denying said petition and within ten days thereafter the defendants to this action appealed from said last mentioned order to the United States District Court of Appeal for the Ninth Circuit, which said Court on August 20, 1928, affirmed said order of said District Court.

Pending said appeal, and on the 19th day of May, 1928, the parties to said arbitration entered into a written stipulation, each of said parties stipulating for itself and as to its own employes and said unincorporated association stipulating for the employes it represented. A copy of said stipulation, so far as it is here material, is included in the judgment of September 29, [102] 1928, next hereinafter referred to.

On September 29, 1928, being advised of the affirmance of its order denying said petition, said United States District Court for the Northern District of California entered a judgment, a copy of which judgment is set out in words and figures as Exhibit "A" to the Bill in Equity herein, and is hereby made a part hereof by reference. Said judg-

ment has never been modified, appealed from, or set aside.

(h) During the months of March to August, 1928, both months inclusive, certain employes of this defendant, including plaintiffs' assignors, who, as this defendant is informed and believes, and therefore states, were also at the same time members of said unincorporated association and were, for the purposes and to the extent specified in said Railway Labor Act, represented by said unincorporated association and its said Secretary and Manager, C. W. Deal, performed services for this defendant as firemen, deckhands and cabin watchmen in and about work upon the ferry boats operated by this defendant on San Francisco Bay as a carrier, as defined in Section One of said Railway Labor Act.

(i) Each of said employes worked some or all of the time during said months, March to August, 1928, both months inclusive, on a so-called 12-hour watch defined by the first paragraph of Rule 6 as it existed in said agreement, Exhibit "A" attached hereto, to-wit:

"Hours of Service

RULE SIX.

Assigned crews, except as hereinafter provided, will work either on the basis of:

(a) Twelve (12) hours on watch, then twenty-four (24) hours off watch, without pay for time off.

or

(b) Eight (8) hours or less on watch each day for [103] six (6) consecutive days.",

and did not work on any of the watches provided for in the exceptions contained in said Rule 6 as such exceptions appear in said Exhibit "A" or on the watch defined in said agreement as "(b) eight (8) hours or less on watch each day for six (6) consecutive days."

This defendant prior to September 30, 1928, fully paid to each of such employes the $10.00 per month increase in monthly wages made by said award to the full extent to which it was then due them, respectively, under the provisions of paragraphs 1 and 2 of the stipulation, the operative portions of which are copied in said judgment, Exhibit "A" attached to said Bill, and continued to pay said $10.00 per month increase in all cases in which the same was due or payable under the provisions of said award and stipulation, and in addition to said $10.00 per month and separate and apart therefrom, this defendant, during the month of September, 1928, caused its accounting and fiscal officials to prepare pay-roll vouchers for such employes for all compensation earned by such employes during the months March to August, 1928, both months inclusive, additional to that they had already been paid. Said pay-roll vouchers were delivered to all of such employes during the month of October, 1928.

Each of said pay-roll vouchers was in the following form:

"Southern No. 36256
Lines
Pacific

PAY-ROLL VOUCHER—SERVICES
SOUTHERN PACIFIC COMPANY
Pacific Lines

San Francisco California, September 30, 1928.

Pay to the
Order of..........(1)..........Miscellaneous

The Sum of..........(2-a)..........Dollars $...... (2-b)......

For Additional Compensation Account. [104]

Arbitration Award between So. Pac. Co. and Ferry-boatmen's Union, Oct 31, 1927.

For March to August, 1928, inclusive.

When signed by the Assistant Treasurer or his duly authorized representative and properly endorsed by payee, this voucher becomes a SIGHT DRAFT on this company and is payable at the office of the company at San Francisco, Calif.

F. L. McCaffery,
Auditor

E. A. VanWynen
For Assistant Treasurer

Payable at the option of holder through any bank."

Each of said pay-roll vouchers bore a fac-simile of the signature of F. L. McCaffery, who was then the auditor of said company, and the genuine signature of E. A. Van Wynen, who was then and has since continued to be the authorized representative of the Assistant Treasurer of said company and authorized to sign said voucher as such representative. In the space hereinbefore designated as "(1)", the voucher contained the name of the employe, and in the spaces shown hereinbefore as "(2-a)" and "(2-b)" the voucher bore the amount paid.

Each of said vouchers bore the printed statement on the back thereof:

"Endorse Here

This voucher is endorsed as an acknowledgment of receipt of payment in full of account as stated within.

....

Payee."

(j) In the month of October, 1928, each of such employes, including plaintiffs' assignors, accepted his said voucher in [105] the form hereinbefore described without objection or protest, and signed the same on the back thereof above the word "Payee" in the form of endorsement hereinbefore copied, and cashed the same and received and retained to his own use the amount represented thereby. None of said employes has returned or offered to return said amount or any part thereof

to this defendant or to any one on its behalf. Plaintiff has not, nor has said unincorporated association or any of plaintiffs' alleged assignors, or any one, returned or offered to return the amount of said voucher so collected and received, or any part thereof, to this defendant or any one on its behalf, or rescinded or offered to rescind his acceptance or cashing of or release signed as aforesaid on the back of said voucher, or any part thereof.

(k) By and by reason of the acts and facts aforesaid, each of said employes released this defendant from all claims and demands for or on account of having, during said six months period, March 1 to August 31, 1928, both days inclusive, worked on said 12-24 hour watches and/or having worked during said period on any one of said watches more than twelve hours.

AND FOR A THIRD, FURTHER AND SEPARATE DEFENSE to each of plaintiffs' causes of action separately stated against this defendant in said Bill in Equity, this defendant states:

This defendant in and by this third, further and separate defense hereby sets up, asserts and relies on a right, privilege and/or immunity arising under the Constitution of the United States, and under a law of the United States, to-wit, the Railway Labor Act, being the Act of Congress passed May 20, 1926, entitled "An Act to provide for the prompt disposition of disputes between carriers and their employes and for other purposes," which is printed

in 44 Statutes at Large, at page 577, et seq., and also appears in United States Code, supp. II, Title 45, Section 151, [106] et seq., which said Act was passed pursuant to the authority granted Congress by paragraph 3 of Section 8 of Article I, of the Constitution of the United States to regulate commerce with foreign nations and among the several states; and this defendant particularly relies on said Railway Labor Act and in particular on the provisions of Subdivision (d) of sub-paragraph "third" of Section 5 of said Railway Labor Act and the first proviso in subdivision (c) of paragraph "third" of Section 9 of said Railway Labor Act, placing the exclusive jurisdiction over a controversy arising over the meaning or application of an award in the Board of Arbitration to be reconvened as provided in said subdivision (d) of sub-paragraph "third of Section 5 of said Railway Labor Act.

(1) This defendant now hereby refers to the allegations of paragraphs (a) to (j), both letters inclusive, of its second, separate and further defense hereinbefore pleaded and restates the same as fully as if such allegations were again herein fully set forth, and in addition thereto states:

(2) That in January, 1929, and after the delivery and cashing of said vouchers by said employes referred to in the first, separate defense herein, said unincorporated association representing its constituent members employed by this defendant, including said employes, presented to this defendant a formal claim that said award, and the judgment affirming

the same, and the stipulation recited in said judgment (and which advanced the retroactive date of the new watch rules from November 1, 1927, to March 1, 1928), bore the meaning and should be so applied that in all cases where on and after March 1, 1928 men were employed on a 12-hour basis—that is to say, on the basis of 12 hours on duty and 24 hours off duty, and so on—each of such men was entitled to four hours overtime for each day that he worked over 8 hours and that this defendant had misapplied said award and stipulation by its [107] payment to men who so worked a lesser sum than a sum that would have been arrived at had said interpretation last mentioned been followed, to which claim said unincorporated association in behalf of its members, including its said assignors, this defendant replied in January, 1929, by stating that it knew of no provision in said award or judgment requiring this company to compensate its employes on said basis named by said unincorporated association, and that this defendant had allowed to its employes referred to by said unincorporated association back-pay allowance in accordance with the provisions of the rules of the award of the Board of Arbitration.

(3) The respective amounts which aggregate the amount sued for herein are amounts claimed by plaintiffs as an assignee, in addition to the amounts heretofore paid the employes of this defendant, whose claims it alleges it holds by virtue of assign-

ments, and said additional amounts are based upon the meaning and interpretation of said award claimed and insisted upon by said unincorporated association in January, 1929, as aforesaid, and in the same month challenged and denied, as aforesaid, by this defendant, and therefore by said claim of said unincorporated association as representing defendants' employes, including plaintiffs' assignors and this defendant's denial of said claim a controversy arose during the month of January, 1929, over the meaning and/or application of said award, as respects the proper method of computing additional compensation in cases where between March 1st and August 31, 1928, both days inclusive, an employe of this defendant as a deckhand or fireman in its ferry service worked the so-called 12-24 hour watch as hereinbefore defined. Said controversy has continued since its said inception and now exists. Said controversy does not include overtime for service over 12 hours on any one watch which overtime, this defendant is informed and believes and therefore states, plaintiff and its predecessors [108] have never contended has not been fully paid for prior to January 1, 1929.

(4) Notwithstanding the provisions of said Subdivision (d) of said sub-paragraph "third" of Section 5 of said Railway Labor Act, said unincorporated association and its alleged successor, Ferryboatmen's Union of California, a non-profit corporation, and each of its assignors have, and each of them has, since the arising of said controversy

failed, neglected and refused and now continue to fail, neglect and refuse, having the ability so to do, to follow or have recourse to the provisions of said subdivision (d) of sub-paragraph "third" of Section 5 of the Railway Labor Act, or to notify the Board of Mediation created by said Act—in writing or otherwise—asking or suggesting the reconvening of said Board or Arbitration, and said Board of Arbitration has not been reconvened and has not considered or passed upon said controversy or on the proper meaning or application of said award in respect of the matters in said controversy, and this Court is therefore, and by reason of the facts in this separate defense pleaded, without jurisdiction to entertain either or any of the plaintiffs' separately stated causes of action in said complaint contained, and plaintiffs' sole remedy, if any they have, is under and by virtue of said provisions of said Railway Labor Act in this separate defense referred to and relied upon.

AND FOR A FOURTH, FURTHER AND SEPARATE DEFENSE to each of plaintiffs' causes of action separately stated against this defendant in said Bill, this defendant avers:

That any and all controversies or differences between plaintiffs and defendant in respect to the matters herein alleged, arise out of the meaning, interpretation and/or application of said arbitration award, Exhibit "A" attached to plaintiffs' Bill, and that by reason thereof defendant alleges and avers

that this [109] Court is without jurisdiction to determine the meaning or interpretation or application of said award; this defendant further avers that the meaning, interpretation or application of said award is solely for the determination of the Arbitration Board herein referred to as provided in Section 5 of the Railway Labor Act, and particularly subdivision "B" thereof.

FOR A FIFTH, FURTHER AND SEPARATE DEFENSE to each of plaintiffs' causes of action separately stated against this defendant in said Bill, this defendant avers:

That the meaning, interpretation or application of said award is solely for the determintion of the Arbitration Board herein referred to as provided in Section the Fifteenth of agreement entered into as set forth in Exhibit "B" hereto; said Section Fifteenth reading as follows:

> "FIFTEENTH: Any differences arising as to the meaning, or the application of the provisions of such award shall be referred for a ruling to the Board, or to a sub-committee of the Board agreed to by the parties thereto; and such ruling, when certified under the hands of at least a majority of the members of such Board, or, if a sub-committee is agreed upon, at least a majority of the members of the sub-committee, and when filed in the same District Court Clerk's office as the original award, shall be a part of and shall have the same force and effect as such original award."

And defendant further avers that in view of the above-quoted provision of Exhibit "B" that plaintiffs, said unincorporated association and its assignors and each of them are estopped from carrying on or proceeding with or prosecuting the above-entitled action or any action or actions, and are estopped from taking any action or actions otherwise than as provided in the above-quoted section.

WHEREFORE, having fully answered, defendant prays that said Bill be dismissed.

DATED this 19th day of March, 1934.

A. A. JONES &
HENLEY C. BOOTH,
Attorneys for Defendant
Southern Pacific Company.

[110]

State of California,
City and County of San Francisco.—ss.

G. L. KING, being first duly sworn, deposes and says:

That he is an officer, to-wit, Assistant Secretary of Southern Pacific Company, the defendant in the above-entitled action; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true.

G. L. KING,

Subscribed and sworn to before me this 19th day of March, 1934.

[Seal] FRANK HARVEY,

Notary Public in and for the City and County of San Francisco, State of California. [111]

AGREEMENT

Between

SOUTHERN PACIFIC COMPANY

(Pacific System)

and

FIREMAN, DECKHANDS, CABIN WATCHMEN, NIGHT WATCHMEN AND MATRONS

Represented by the

FERRYBOATMEN'S UNION OF CALIFORNIA

Date effective January 16, 1925

SCOPE

RULE 1.

These rules shall govern hours of service, working conditions and rates of pay of Marine Firemen, Deckhands, Cabin Watchmen, Night Watchmen and Matrons, employed on passenger, car and automobile ferries, tugs towing car floats and fire boats, operated by above carrier, on San Francisco Bay and tributary waters. They do not apply to employes on river boats.

RATES OF PAY

RULE 2.

PASSENGER AND CAR FERRIES and TUGS TOWING CAR FLOATS

Firemen	$136.35 per month
Deckhands	$129.40 " "
Cabin Watchmen	$129.40 " "
Night Watchmen	$110.00 " "
Matrons	$ 75.00 " "

FIRE BOATS

Firemen	$ 90.90 " "
Deckhands	$ 86.30 " " [112]

NOTE: Employes working broken assignments will be paid in the following manner:

(a) On 8 and 16 watches, allow for number of days worked on basis of 12 times the monthly salary, divided by 313.

(b) On 12 and 24 watches, allow one and one-half days for each watch worked. on basis of 12 times the monthly salary divided by 365.

(c) On 12 and 24 watches, with one watch off per month, allow one and one-half days for each watch worked, on basis of 12 times the monthly salary, divided by 347.

Above applies to employes, whose monthly assignment is broken as well as to relief employes and those in extra service.

Preservation of Rates

RULE 3.

The minimum rates and all rates in excess thereof, as herein established, shall be preserved.

Rating Positions

RULE 4.

The entering of employes in the positions occupied in the service or changing their classification or work shall not operate to establish a less favorable rate of pay or condition of employment than is herein established.

Basic Day

RULE 5.

Eight (8) consecutive hours shall constitute a day's work.

Hours of Service

RULE 6.

Assigned crews, except as hereinafter provided, will work either on the basis of:

(a) Twelve (12) hours on watch, then twenty-four (24) hours off watch, without pay for time off. [113]

or

(b) Eight (8) hours or less on watch each day for six (6) consecutive days.

Exceptions

(1) On boats with two crews, watches may be separated by an interval of time.

(2) Extra crews may be used on any day it is found necessary to operate one or two-crewed boats beyond assigned hours of regular crews.

(3) On basis of Section (a) of this Rule, length of watches may be varied as necessary to arrange

relief, but must average eight (8) hours per calendar day in any cycle of three (3) weeks.

(4) Where two crews are used, watches may be as long as eight hours and forty minutes, provided the combined watches do not exceed sixteen hours and no crews work over forty-eight hours in six consecutive days.

(5) On boats operating out of Vallejo Junction, one crew will be used each day. Employes will work twelve hour watches for two days, with the third day off, without pay for time off, and repeat.

(6) On tugs towing car floats crews working on basis of Section (b) of this Rule may be worked not to exceed nine hours and twenty minutes per watch.

Crews on basis of Section (a) of this Rule will be given one watch off per month. Such watch to be designated by the Railroad.

(7) On fire boats, crews will work twenty-hours on and then twenty-four hours off without pay for time off.

(8) Limit anywhere provided on length of watches does not apply in emergency or when necessary to make extra trips to handle heavy volume traffic which cannot be handled on schedule trips. [114]

(9) Watches on three-crewed boats shall not begin or terminate between one (1) A.M. and Six (6) A.M.

(10) Employes required to operate boat to and from yard shall be paid regular run rates.

Relief Terminals

RULE 7.

Crews will be relieved at same terminal where they begin their duties.

Overtime

RULE 8.

The monthly salary now paid the employes covered by this Agreement shall cover the present recognized straight time assignment. All service hourage in excess of the present recognized straight time assignment shall be paid for in addition to the monthly salary at the pro-rata rate.

Fixing Overtime Rate

RULE 9.

To compute the hourly overtime rate divide twelve times the monthly salary by the present recognized straight time annual assignment.

NOTE: Under above the hourly overtime rates, for employes working different assignments, will be arrived at in the following manner:

(a) On 8 and 16 watches, divide 12 times the monthly salary by 2504.

(b) On 12 and 24 watches, divide 12 times the monthly salary by 2920.

(c) On 12 and 24 watches, with one watch off per month, divide 12 times the monthly salary, by 2776.

Overtime for employes operating under Exception (5) to Rule 6, Fireboat employes and night watchmen, will be computed under Section (b) of this note. [115]

Absorbing Overtime

RULE 10.

Employes will not be required to suspend work during regular hours to absorb overtime.

Computing Overtime

RULE 11.

Overtime shall be computed on the actual minute basis. Even hours will be paid for at the end of each pay period; fractions thereof will be carried forward.

Notified or Called

RULE 12.

When notified or called to work outside of established hours, after having been released from duty, employes will be paid a minimum allowance of four (4) hours.

To Be Called Only in Emergency

RULE 13.

Crews will not be called to work outside of regular assigned hours except in emergency or to take care of an extra heavy volume of traffic that cannot be handled on scheduled trips.

Bulletining of Vacancies

RULE 14.

New positions or vacancies, of thirty (30) days or more, will be bulletined at least semi-monthly for a period of five (5) days and assigned in accordance with Rule 15. Employes filling temporary positions will remain thereon until expiration thereof

or return of employe relieved, except that an employe holding a temporary vacancy, who is the successful applicant for a permanent position, will be placed thereon as soon as practicable after assignment. [116]

Promotion Basis

RULE 15.

Promotions will be based on ability, merit and seniority, ability and merit being sufficient, seniority shall prevail. The Management shall be the judge, subject to appeal as provided for in Rules 21 to 26, inclusive.

Declining Promotion

RULE 16.

Employes declining promotion will not lose their seniority.

Seniority Rosters

RULE 17.

A seniority roster of all employes in each class of service, showing name and date of entering such service, will be posted in a place accessible to those affected. It will be revised in January of each year and be open for correction for a period of sixty days. The duly accredited representative of the employes will be furnished a copy of such roster upon written request.

Seniority Restrictions

RULE 18.

Seniority will be restricted separately to each class of service. It begins at the time employe's pay starts.

Retention of Seniority During Furlough

RULE 19.

Employes furloughed for six (6) months or less will retain their seniority.

Reduction in Force

RULE 20.

In reducing forces, seniority shall govern. When forces are increased employes will be returned to the service in order of their seniority. Employes desiring to avail themselves of this rule, must file their names and addresses with the proper officials at the time of reduction. Employes [117] failing to report for duty (or give satisfactory reason for not doing so) within seven (7) days from date of notification will be considered out of the service.

Investigations

RULE 21.

An employe disciplined, or who considers himself unjustly treated, shall have a fair and impartial hearing, providing written request is presented to his immediate superior within ten (10) days of the date of the advice of the discipline, and the hearing shall be granted within ten (10) days thereafter.

Decision and Appeal

RULE 22.

A decision will be rendered within seven (7) days after completion of hearing. If an appeal is taken, it must be filed with the next higher officer and a copy furnished the official whose decision is appealed from within ten (10) days after the date of decision. The hearing and decision of the appeal shall be governed by the time limits of the preceding rule.

Representation

RULE 23.

At the hearing, or on the appeal, the employe may be assisted by a Committee of employes, or by one or more duly accredited representatives.

Right of Appeal to Higher Officers

RULE 24.

The right of appeal by employes or representatives in regular order of succession and in the manner prescribed, up to and inclusive of the highest officials designated by the railroad to whom appeals may be made is hereby established. [118]

Transcript

RULE 25.

An employe on request will be given a letter stating the cause of discipline. A transcript of the evidence taken at the investigation or on the appeal will be furnished on request to the employe or representative.

Exoneration

RULE 26.

If the final decision decrees that charges against the employe were not sustained, the record shall be cleared of the charge, if suspended or dismissed, the employes will be returned to former position and paid for net wage loss.

Attending Court

RULE 27.

Employes taken away from their regular assigned duties at the request of the Management, to attend Court or to appear as witnesses for the carrier will be furnished transportation and will be allowed compensation equal to what would have been earned had such interruption not taken place, and in addition necessary actual expenses while away from home station. Any fee or mileage accruing will be assigned to the carrier.

Transfer by Management

RULE 28.

Employes transferred by direction of the Management to positions which necessitate a change of residence will receive free transportation, over employer's line, for themselves, dependent members of their family and household goods, when it does not conflict with State or Federal laws.

Transfer by Seniority

RULE 29.

Employes exercising seniority rights to new positions or vacancies which necessitate a change of

residence will receive free transportation over employer's line for them- [119] selves, dependent members of their families, and household goods, when it does not conflict with State or Federal laws, but free transportation of household effects need not be allowed more than once in a twelvemonth period.

Validating Records

RULE 30.

Applicants for employment entering the service shall be accepted or rejected within ninety (90) days after the applicant begins work. When applicant is not notified to the contrary within the time stated it will be understood that the applicant becomes an accepted employe, but this rule shall not operate to prevent the removal from the service of such applicant, if subsequent to the expiration of ninety (90) days it is found that information given by him in his application is false. Original letters of recommendation and other papers filed by applicant shall be returned within ninety (90) days, provided copies of the same have also been filed.

Health and Safety

RULE 31.

Health and safety of the employes will be reasonably protected.

Safety Committee Meetings

RULE 32.

Members of safety committees will be paid wage loss suffered as a result of attending safety meetings.

Posting Notices

RULE 33.

Suitable provision may be made in Forecastle of each vessel for posting notices covering Organization business of a non-controversial nature. Copies of all such notices to be furnished supervising officer of the carrier.

Transportation

RULE 34.

Employes covered by this agreement and those dependent upon them for support will be given the same consideration [120] by employing carrier in granting free transportation as is granted other employes in the service.

General Representatives

RULE 35.

General representatives of the employes covered by these rules will be granted leave of absence, without loss of seniority.

Committees

RULE 36.

General and Local Committees representing employes covered by this Agreement will be granted the same consideration by employing carrier as is granted general and local committees representing employes in other branches of the service.

Duly Accredited Representatives

RULE 37.

Where the term "duly accredited representative" appears in this Agreement it shall be understood to mean the regularly constituted committee representing the class of employes on the railroad where the controversy arises, or any representative or representatives the employes directly interested may select or designate.

Date Effective

RULE 38.

This Agreement will be effective as of January 16, 1925, and shall continue in effect until it is changed as provided herein or under the provisions of the Transportation Act, 1920.

Accepted for the Employes:

FERRYBOATMEN'S UNION OF
CALIFORNIA,
C. W. DEAL
Secretary and Business Manager

Accepted for the Carrier:

J. H. DYER,
General Manager,
SOUTHERN PACIFIC CO.
(Pacific System) [121]

"EXHIBIT B"

THIS AGREEMENT, made and entered into this Seventh (7th) day of January, 1927, between Atchison, Topeka & Santa Fe Railway (Coast Lines), Northwestern Pacific Railroad Company, Southern Pacific Company (Pacific Lines) and the Western Pacific Railroad Company (hereinafter referred to as parties of the first part), represented respectively by J. A. Christie, Superintendent, W. S. Palmer, President & General Manager, J. H. Dyer, General Manager, and E. W. Mason, Vice President & General Manager, and the marine Firemen, Deckhands, Cabin Watchmen, Night Watchmen and Matrons, employes in the service of such railroads (hereinafter referred to as the party of the second part), as represented by the Ferryboatmen's Union of California, WITNESSETH:

The parties hereto mutually agree and stipulate as follows:

FIRST: The above named railroads are carriers subject to the Interstate Commerce Act; the above named marine Firemen, Deckhands, Cabin Watchmen, Night Watchmen and Matrons are employes of such railroads, and the above representatives are the fully accredited representatives of such railroads and employes respectively.

SECOND: The controversies between the parties hereto, as hereinafter specifically stated, are hereby submitted to arbitration, and such arbitration is

had under the provisions of the Railway Labor Act, approved May 20, 1926.

THIRD: The Board of Arbitration (hereinafter referred to as "the Board") shall consist of six (6) members.

FOURTH: The specific questions to be submitted to the Board for decision are, whether or not there shall be any increase in the wages, or changes in working rules Nos. 6 and 8, of the employes of these railroads, represented by the party of the second part. [122]

The present rates of pay and rates proposed by the employes are as follows:

Classification	Present Rates	Proposed Rates
Firemen	$136.35 per month	$156.35 per month
Deckhands	129.40 " "	149.40 " "
Cabin Watchmen	129.40 " "	149.40 " "
Night Watchmen	110.00 " "	130.00 " "
Matrons	75.00 " "	95.00 " "
	Fire Boats	
Firemen	90.90 " "	104.23 " "
Deckhands	86.30 " "	99.63 " "

RULE 6—HOURS OF SERVICE

(Present Rule reads as follows)

Assigned crews, except as hereinafter provided, will work either on basis of:

(a) Twelve (12) hours on watch, then twenty-four (24) hours off watch, without pay for time off,

OF

(b Eight (8) hours or less on watch each day for six (6) consecutive days.

EXCEPTIONS

(1) On boats with two crews, watches may be separated by an interval of time.

(2) Extra crews may be used on any day it is found necessary to operate one or two crewed boats beyond assigned hours of regular crews.

(3) On basis of Section (2) of this Rule, length of watches may be varied as necessary to arrange relief, but must average eight (8) hours per calendar day in any cycle of three weeks.

(4) Where two crews are used, watches may be as long as eight hours and forty minutes, provided the combined watches do not exceed sixteen hours and no crews work over forty-eight hours in six consecutive days. [123]

(5) On boats operating out of Vallejo Junction, one crew will be used each day. Employes will work twelve-hour watches for two days, with the third day off, without pay for time off and repeat.

(6) On tugs towing car floats crews working on basis of Section (b) of this rule may be worked not to exceed nine hours and twenty minutes per watch.

Crews on basis of Section (a) of this rule will be given one watch off per month. Such watch to be designated by the railroad.

(7) On fire boats, crews will work twenty-four hours on and then twenty-four hours off without pay for time off.

(8) Limit anywhere provided on length of watches does not apply in emergency or when necessary to make extra trips to handle heavy volume of traffic which cannot be handled on schedule trips.

(9) Watches on three crewed boats shall not begin or terminate between One (1) A.M. and after Six (6) A.M.

(10) Employes required to operate boat to and from yard shall be paid regular run rates.

* * * * * *

The specific questions submitted under Rule 6 are:

(a) Shall the rule remain as written, or

(b) Shall the portion of the rule down to the word "Exceptions" be changed so as to read:

> "Assigned crews will work on the basis of eight (8) hours or less on watch each day for six (6) consecutive days", and

(c) If the rule is changed as under (b) hereof whether, and if so to what extent, the exceptions shall be changed [124]

* * * * * *

RULE 8—OVERTIME

(Present rule reads as follows)

> "The monthly salary now paid the employes covered by this Agreement shall cover the present recognized straight time assignment. All service hourage in excess of the present recognized straight time assignment shall be paid for in addition to the monthly salary at the pro rata rate."

The specific questions submitted under Rule 8—Overtime, are:

(a) Shall the present rule providing for pro rata rates of pay for overtime remain in effect, or

(b) Shall the verbiage of the rule be modified to provide for time and one-half for overtime after eight (8) hours when there is no relief crew waiting under pay?

* * * * * *

FIFTH: In its award the Board shall confine itself strictly to decision as to the questions so specifically submitted to it.

SIXTH: The questions, or any part thereof, as submitted may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of the parties here to and served on the Board, or upon the Chairman of the Board, at any time prior to the making of the award.

SEVENTH: The signatures of a majority of the members of the Board affixed to its award shall be competent to constitute a valid and binding award.

EIGHTH: The Board shall begin its hearings prior to the expiration of the period of ten (10) days from the date on which the last arbitrator necessary to complete the Board is appointed.

NINTH: The Board shall make and file its award prior to the expiration of the period of thirty-five (35) days from the date on which the Board begins its hearings, but the parties hereto may agree, at any time prior to the making of such award, upon

the extension of such period (whether or not previously extended). [125]

TENTH: The board shall hold its hearings in the City of San Francisco, State of California.

ELEVENTH: The award of the Board as to wages shall become effective as of January 1st, 1927, and as to rules shall become effective on the first day of the month following the date on which the award is filed, and shall continue in force, both as to wages, and rules, for the period of one year from the effective date thereof, and thereafter subject to thirty (30) days' notice by or to the railroads.

TWELFTH: The award of the Board and the evidence of the proceedings before the Board relating thereto, certified under the hands of at least a majority of the members of the Board, shall be filed in the Clerks' office of the District Court of the United States for the Northern District of California, Southern Division.

THIRTEENTH: Such award and proceedings so filed shall constitute the full and complete record of the arbitration.

FOURTEENTH: Such award so filed shall be final and conclusive upon the parties thereto as to the facts determined by the award and as to the merits of the controversy decided.

FIFTEENTH: Any differences arising as to the meaning, or the application of the provisions of such award shall be referred for a ruling to the

Board, or to a sub-committee of the Board agreed to by the parties thereto, and such ruling, when certified under the hands of at least a majority of the members of such Board, or, if a sub-committee is agreed upon, at least a majority of the members of the sub-committee, and when filed in the same District Court Clerk's office as the original award, shall be a part of and shall have the same force and effect as such original award.

SIXTEENTH: The respective parties to the award will each faithfully execute the same. [126]

SEVENTEENTH: This constitutes the entire agreement between the parties to submit the matters in controversy to arbitration.

Signed on behalf of the parties of the first part by J. A. Christie, W. S. Palmer, J. H. Dyer and E. W. Mason, and on behalf of the party of the second part by C. W Deal, this day and year as above written

For the Railroads:

Atchison, Topeka & Santa Fe Railway
(Coast Lines)
(Signed) J. A. CHRISTIE,
Superintendent.

Northwestern Pacific Railroad Co.
(Signed) W. S. PALMER,
President & General Manager.

Southern Pacific Company
(Pacific Lines)
(Signed) J. H. Dyer
General Manager.

The Western Pacific Railroad Co.
(Signed) E. W. MASON,
Vice President & General Manager.
For the Employes:
By (Signed) C. W. DEAL,
Secretary & Business Manager, Ferryboatmen's Union of California.

State of California,
City and County of San Francisco.—ss.

On this Seventh (7th) day of January, 1927, before me personally appeared J. A. Christie, W. S. Palmer, J. H. Dyer and E. W. Mason, to me known to be the persons described in and who executed the foregoing agreement, and duly acknowledged the execution thereof.

(Signed) HYWEL DAVIES
Member, Board of Mediation.

State of California,
City and County of San Francisco.—ss.

On this Seventh (7th) day of January, 1927, before me personally appeared C. W. Deal, to me known to be the person described in and who executed the foregoing agreement, and duly acknowledged the execution thereof.

(Signed) HYWEL DAVIES
Member, Board of Mediation.

[Seal of Board of Mediation] [127]

PROPOSED WATCH RULE
AND
EXCEPTIONS

HOURS OF SERVICE

RULE 6.

Assigned crews will work on the basis of eight (8) hours or less on watch each day for six (6) consecutive days.

EXCEPTIONS:

(1) On boats with two crews, watches may be separated by an interval of time.

(2) Extra crews may be used on any day it is found necessary to operate one or two crewed boats beyond assigned hours of regular crews.

(3) On three crewed tugs towing car floats and car ferries, except on Carquinez Straits, crews may be assigned twelve (12) hours on watch with twenty-four (24) hours off watch, provided such assigned watches average forty-eight hours per week within the time required to bring it about.

(4) On one and two crewed tugs towing car floats crews may be worked not to exceed nine (9) hours and twenty (20) minutes per watch.

(5) On passenger and vehicle boats assigned watches may be:

(a) Nine (9), ten (10) or twelve (12) hours on one crewed boats.

(b) Nine (9) or ten (10) hours on two crewed boats;

provided such assigned watches average as nearly as practicable forty-eight (48) hours per week (not less), and provided further that overtime shall be paid for all hourage assigned in excess of an average of forty-eight (48) hours per week.

(6) On Fire Boats crews will work twenty-four (24) hours on and then twenty-four (24) hours off, without payment for time off.

(7) Length of assigned watches on two and three crewed boats may be varied not exceeding forty-five (45) minutes, to arrange [128] relief without payment of overtime and the resulting unequal length of watches shall be equalized by men working watches in rotation.

(8) Extra men shall be paid one (1) day for eight hours, or less, and overtime after eight (8) hours.

(9) Limit anywhere provided on length of watches does not apply in emergency, or when necessary to make extra trips to handle heavy volume of traffic which cannot be handled on schedule trips.

(10) Watches on three crewed boats shall not begin or terminate between one (1) A.M. and Six (6) A.M.

(11) Employes required to operate boat to and from yard shall be paid regular run rates.

12) Night watchmen may be assigned on twelve (12) hour watches four days per week.

San Francisco, Cal.
November 4, 1927.

[Endorsed] Receipt of the within Answer of Defendant Southern Pacific Company is admitted this 19th day of March, 1934.

DERBY, SHARP, QUINBY & TWEEDT,
Attorney for Plaintiffs.

Filed Mar. 19, 1934. [129]

[In action 3636-S plaintiffs filed a "Bill in Equity to Enforce Decree" against the Northwestern Pacific Railroad Company. The allegations of this bill are the same as the allegations of the bill in 3635-S, except for the names of the men involved and the amounts claimed. The data as to the men involved and the amounts paid and claimed appear in the various exhibits introduced by the parties, as set out in the statement of evidence and are printed later herein. As a matter of economy and to avoid unnecessary duplication this bill is not printed herein.

The answer in the same case is omitted for the same reasons and because the allegations, except for names and amounts, are identical with the allegations of the Southern Pacific Company in 3635-S, which is printed herein.]

[Title of Court and Cause]

OPINION

ST. SURE, District Judge.

The above entitled cases are the outgrowth of an award filed on October 31, 1927, pursuant to an arbitration held under the Act of Congress known as the Railway Labor Act. (44 Stat. p. 577; 45 USCA Sec. 151, et seq.)

The present controversy is between certain railroads and their employes who are seeking an ac-

counting and back pay for overtime work performed during a six-months period from March 1, 1928, to September 1, 1928.

In 1925, the Atchison, Topeka & Santa Fe Railway, Northwestern Pacific Railroad Company, Southern Pacific Company and the Western Pacific Railroad (hereinafter called the carriers), had an agreement covering "hours of service, working conditions and rates of pay" with their employes classified as marine firemen, deckhands, cabin watchmen, night watchmen, and matrons (hereinafter called the union), "employed on passenger, car and automobile ferries, tugs towing car floats and fire boats" operated by the carriers on San Francisco Bay and tributary waters.

On January 7, 1927, the carriers entered into an agreement with the union to submit to arbitration certain demands of employes for increases in pay and changes in working conditions. The agreement provided: "The specific questions to be submitted to the Board for decision are whether or not there shall be any increase in the wages, or changes in working Rules Nos. 6 and 8 of the employes of these railroads. * * *"

Rule 6 read: "Assigned crews, except as hereinafter provided, will work either on basis of: (a) Twelve (12) hours on watch, then twenty-four (24) hours off watch, without pay for time off, or (b) Eight (8) hours or less on watch each day for six (6) consecutive days." Then [181] follows a list of "exceptions", some of which will be referred to later.

Rule 8 read: "The monthly salary now paid the employes covered by this agreement shall cover the present recognized straight time assignment. All service hourage in excess of the present recognized straight time assignment shall be paid for in addition to the monthly salary at the pro-rata rate."

The specific questions submitted under Rule 6 were: "(a) Shall the rule remain as written, or (b) shall the portion of the rule down to the word 'exceptions' be changed so as to read: 'Assigned crews will work on the basis of (8) hours or less on watch each day for six (6) consecutive days'."

The specific questions submitted under Rule 8—Overtime were: "(a) Shall the present rule providing for pro-rata rates of pay for overtime remain in effect, or (b) Shall the verbiage of the rule be modified to provide for time and one-half for overtime after eight (8) hours when there is no relief crew waiting under pay?"

In its award the board increased wages $10 per month, fixing the rates of pay as follows:

Passenger and car ferries, and tugs towing car floats:

Firemen	$146.35	per month
Deckhands	139.40	" "
Cabin Watchmen	139.40	" "
Night Watchmen	120.00	" "
Matrons	85.00	" "
Fire Boats:		
Firemen	97.57	" "
Deckhands	92.94	" "

The award eliminated the twelve-hour watches, changing Rule 6 to read as follows: "Rule 6. Assigned crews will work on the basis of eight (8) hours or less on watch each day for six (6) consecutive days." [182]

The award affirmed Rule 8, above quoted.

Petition for impeachment of the award filed by the carriers was dismissed by this Court and the award confirmed. Upon appeal, the decision of this Court was affirmed by the Circuit Court of Appeals on August 20, 1928. Atchison, T. & S. F. Ry. Co., et al., v. Ferryboatmen's Union of Cal. 28 F. (2) 26.

On May 19, 1928, pending the appeal from decision of this Court to the Circuit Court of Appeals, the carriers and the union entered into a stipulation, the pertinent part of which reads as follows:

> "1. That the ten dollars ($10.00) per month increase made by said award is to be put into effect and paid beginning May 1, 1928, and is to remain in effect until April 1, 1929, and thereafter subject to the 30-day provision in the existing contracts between the Ferryboatmen's Union of California and the respective carriers, copies of which contracts are exhibits in this case and are on file in the records of this Court.
>
> "2. That the $10.00 per month increase is to be retroactively paid to January 1, 1927; payment of such retroactive increase is to be made to the employees in service during all or any part of the period from and including January 1, 1927, to and including April 30, 1928, as

early as practicable and not later than June 15, 1928.

"3. That if the above entitled Circuit Court of Appeals affirms the decree confirming the award the retroactive date of the new watch rules which are a part of that award shall be advanced from November 1, 1927, to March 1, 1928.

"4. On the coming down of the remittitur or mandate from the Circuit Court of Appeals to the District Court the judgment of the District Court shall incorporate and confirm the terms of this stipulation irrespective of whether said Circuit Court of Appeals affirms or reverses the judgment and order of the District Court heretofore rendered herein."

After affirmance by the Circuit Court of Appeals, this court, on September 29, 1928, entered a judgment incorporating the award and said stipulation.

During the period from and including March 1, 1928, to September 1, 1928, the carriers, as appears by their answers, continued in employment in the same capacities certain of their employes "who had formerly and prior to said arbitration agreement been employed as so-called '12-hour men', and so [183] continued them upon the same basis or hours of service and on the same regular assigned watches as they and all of the so-called 'former 12-hour men' had been employed prior to said arbitration agreement."

During the pendency of the appeal the carriers, in accordance with the award and stipulation, complied with the $10 per month wage increase. On September 26, 1928, the mandate of the Circuit Court of Appeals affirming the decree of this Court was filed herein. On September 30, 1928, the carriers made payment to their employes for overtime, the amounts due being ascertained by the application of the following formula to each individual work record:

> Memorandum as to application of (313 divisor) wage rates and method of computing back pay for Marine Firemen, Deckhands, Cabin Watchmen, and Night Watchmen, serving on 12-hour watch assignments, and who were accorded 48-hour week under Arbitration Award.

Monthly, Daily and Hourly Rates of Pay are as follows:

Classification	Monthly Rate	Daily (8-Hour) Rate	Hourly Overtime Rate
Passenger and Car Ferries and Tugs Towing Car Floats			
Fireman	$146.35	$5.6109	.7014¢
Deckhand	139.40	5.3444	.6681¢
Cabin Watchman	139.40	5.3444	.6681¢
Night Watchman	120.00	4.6006	.5751¢
Matron	85.00	3.2588	.4073¢

Employes who served on twelve (12) hour watch assignments, (56-hour week) are entitled to the benefits of forty-eight (48) hour week, in way of additional compensation, commencing with March 1st, 1928. That is, (except on

Fire Boats where there is no change) they should receive the same compensation as would have accrued to eight (8) and sixteen (16) hour assigned men, working the same number of hours.

It is concluded that the best way to arrive at the balance due any such individual, is to take the total number of eight (8) hour days, and the number of hours overtime served during a month, and multiply the same by the above enumerated daily and hourly rates, then allow as additional compensation, the difference between the total so obtained and the amount of compensation (exclusive of any special adjustments) the employe has already received for that month. In most instances this can be reduced to a certain additional amount per day or hour, and so shown on the pay-roll for more complete record purposes.

Care should be exercised to see that credit is taken for back pay allowances on special payrolls for months [184] of March and April, 1928, the $10.00 per month wage increase allowed, being included on regular payroll commencing with May 1st.

Under above, individual back pay allowances for months of March, April, May, June, July and August, should be computed separately for each month, but all included on one payroll, that one paycheck may be issued to cover all that is due any employe. For month of

> March make additional allowance only in connection with watches that were commenced at midnight of Feb. 29th—March 1st, 1928, or thereafter. For August include on back payroll only watches commencing prior to midnight of Aug. 31st-Sept. 1st, 1928.
>
> Commencing with Sept. 1st, 1928, such employes involved should be compensated on the new (48-hour week) basis on regular payrolls. Hours of service assignments as provided for in Rule 6 and its exceptions as contained in the Arbitration Award, should be made effective as rapidly as practicable.

When the original proceedings were had, the Ferryboatmen's Union of California, to which had been theretofore assigned the claims of the individual employes, was an unincorporated association. On October 2, 1931, the union was incorporated as a nonprofit corporation under the laws of California, and on the same day, the union in its turn assigned to the corporation all of its rights and interest in said claims of the employes and in the judgment of this court, and the corporation now appears as the plaintiff herein seeking in equity the enforcement of the decree in the original proceeding; the suit against the Atchison, Topeka, Santa Fe Railway Company has been settled; the Western Pacific Railroad has, by stipulation of counsel, agreed to abide by the final decision herein; and the only defendants now

before the court are the Southern Pacific Company and the Northwestern Pacific Railroad Company.

Because the Railway Labor Act provides for an enforceable judgment, without specifying the procedure of enforcement, counsel thought it necessary for the protection of the rights of the union to file several pleadings, all involving the same subject matter and concerning which there could be, under the circumstances, but a single recovery. In the original proceeding, case 1955-S, there was filed a motion "that the Court make such other orders as will be [185] necessary or proper to carry into effect the judgment and decree heretofore entered herein", including a reference to a commissioner to ascertain the amounts due; also an ancillary bill to enforce the judgment; there were also filed separate bills in equity (Cases Nos. 3635-S and 3636-S) against each carrier for an accounting, etc. The three suits were consolidated, tried and submitted for decision as one case.

In addition to the foregoing statement the following facts are undisputed:

That the award changed Rule 2 of the 1925 working agreement by increasing the rate of pay as above specified, but the following language of the rule remained unchanged: "Note: Employes working broken assignments will be paid in following manner: (a) On 8 and 16 watches, allow for number of days worked on basis of 12 times the monthly salary, divided by 313. (b) On 12 and 24 watches,

allow one and one-half days for each watch worked, on basis of 12 times the monthly salary divided by 365. * * Above applies to employes whose monthly assignment is broken as well as to relief employes and those in extra service.''

That the award affirmed Rule 8 defining overtime, above quoted, and left unchanged Rule 9, relating to fixing overtime rate, as follows: ''Rule 9. To compute the hourly overtime rate divide twelve times the monthly salary by the present recognized straight time annual assignment. Note: Under above the hourly overtime rates, for employes working different assignments, will be arrived at in the following manner: (a) On 8 and 16 watches, divide 12 times the monthly salary by 2504. (b) On 12 and 24 watches, divide 12 times the monthly salary by 2920.''

That at all times herein, eight consecutive hours constituted a day's work. That under the 1925 agreement and until changed by the award assigned crews worked either on the basis of (a) twelve hours on watch, then twenty-four hours off watch, without pay for time off, or (b) eight hours or less [186] on watch for six consecutive days. That the award eliminated the twelve-hour watch, establishing hours of service as in Rule 6 above quoted.

That following the award, the carriers continued to assign crews under the former twelve-hour watch, paying the man at the increased monthly rate, but nothing for overtime; that under the 1925 agree-

ment a twelve-hour man was not entitled to overtime until he worked twelve hours on watch; that no time over twelve hours is involved herein.

That the purpose of the carriers' formula, above quoted, was to equalize the pay of the 12 and 24-hour men with the pay of the 8 and 16-hour men; that the straight-time rate and the overtime rate of the carriers are the same, and that under the formula the rate of compensation of the 12 and 24-hour men was exactly the same as that of the 8 and 16-hour men; that the rate of pay contended for by the union would give the 12 and 24-hour men eighteen per cent additional over the 8 and 16-hour men; that before the award, the 12-hour men worked more hours per month than the 8-hour men and their hourly earnings were less than the 8-hour men, an inequality of from 10 to 13 per cent against the 12-hour men, which caused dissatisfaction and led to the arbitration.

The heart of the present controversy is as to the correctness of the method used by the carriers in calculating the amounts due to the men for overtime. The union claims that the 12-hour men have not been paid for excess hourage under the award and judgment, which the carriers deny, asserting full payment.

The union contends that the 12-hour men were given regular assigned watches of 12 hours on and 24 hours off; that when the men worked the full watches assigned, they earned the monthly pay for

the straight time (the first 8 hours of each watch) and are entitled to additional pay [187] for the last 4 hours of each watch (overtime) at the 8-hour rate of 70.12 cents per hour; that the carriers made no attempt to segregate the 4 hours overtime from the 8 hours straight time, but by a "lumping process" added together the straight time and the overtime and by their formula figured out a new rate per hour; that the fundamental fallacy in the arithmetic of the carriers is in taking a daily rate of $5.6109 based on 313 days (the number of days in the year an 8-hour man works) when the men were assigned only 20 or 21 watches containing 245 instead of 313 working days. "You have the rule," said counsel for the union in his argument, "which states that the monthly salary covers the assigned time; that 8 hours shall be the basis of a day's labor, and that 8 hours or less each day for six consecutive days shall constitute the straight time and providing that, in addition, overtime shall be due for all time in excess of the eight hours. Now, any system of calculation, therefore, which consists simply of adjusting at a higher rate of pay to make the wages agree to what the 8-hour man had gotten, ignores completely the fundamental element of the contract, that so far as the straight time or first eight hours of the time is concerned, the men are entitled to a monthly salary so long as they work all of the time to which the company assigned them."

The carriers contend that when the Board amended the award it provided only one class for assigned crews working on the basis of 8 hours or less on watch each day for 6 consecutive days; that either these 12-hour men were working on broken watches or they were working on an assignment which was not provided for by the award; that the award abolished the assigned 12-hour watch but provided in exception five: (5) "On boats operating out of Vallejo Junction crews may be assigned 12 hours per day and not to exceed 48 hours per week," and in exception seven (7) for tugs towing car floats and car ferries crews may be assigned 12 hours [188] on watch with 24 hours off watch, provided such assigned watches average 48 hours per week, and in exception eight (8) on fire boats crews will work 24 hours on and 24 hours off, without pay for time off, and in exception twelve (12) night watchmen may be assigned on 12-hour watches four days per week.

"When you take the amendment to Rule 6 and the remodeling of the exceptions," said counsel for the carriers in argument, "you will find what the award imported into this ferryboat situation was a 48-hour week. Rule 2 was unchanged, except to increase the pay by $10 per month, but the note to Rule 2 is very significant: 'Employes working broken assignments will be paid in the following manner: (a) On 8 and 16 watches, allow for number of days worked on basis of 12 times the monthly

salary, divided by 313. Above applies to employes whose monthly assignment is broken, as well as to relief employes and those in extra service.' Rule 9 for the computation of the overtime rate is not changed. The Ferryboatmen's Union asked for punitive overtime, time and a half, and the Board of Arbitration let the time remain as straight time for overtime. So in paying a man it makes no difference whether you pay him a day's wages for 8 hours and 4 hours overtime; he gets the same amount. * * * There are two distinct classes of claims in this case. There are, first, these 12 and 24-hour men who did not work all of the assigned watches in the month; that is the 20 or 21 12-hour watches in the month, and then those men who I will call broken assignment men. * * * Over 25 per cent. of the claims are for broken assignments. Those claims are obviously not payable on the basis of a full month's pay. * * * They are to be adjusted Under Rule 2."

It is further urged that before the award the 8-hour men were getting 10 to 13 per cent. more pay than the 12-hour men, and that one of the principal objects of the arbitration was to equalize the pay between these two classes; that by the September adjustment the 12-hour men got "all together" [189] exactly what the 8-hour men were paid when they worked 8 hours straight time and 4 hours overtime.

The contentions of each side are best shown by the following diagrams based on the evidence:

12-24 FIREMEN—RATES OF PAY. MARCH 1-AUGUST 31, 1928.

Showing rates originally paid and rates used in adjustment of September, 1928.

Firemen worked all 12-24 watches in a calendar month.

COLUMN A	COLUMN B
Rate paid before Sept. adjustment	Rates used in Sept. adjustment
The monthly rate for Fireman was..........$146.35 The firemen had been paid that amount before the Sept. Adjustment for a month's work of 20 or 21, 12-hour watches.	21 watches 21 12-hr. watches= 31½ 8-hr. days. 31½ 8-hr. dys. x $5.6109=$176.74 Less amount of monthly salary already paid.......... 146.35 Adjustment check..........$ 30.39
	20 watches 20 12-hr. watches= 30 8-hr. dys. 30 8-hr. dys. x $5.6109= $168.33 Less amount of monthly salary already paid.......... 146.35 Adjustment check..........$ 21.98

[190]

CONRAD ANDERSON—Fireman—on a 12-24 hour assignment. No. 2 on Plaintiff's Exhibit 8a.—21 watch assignment.
Worked only one 12-hour watch in August, 1928.

It is agreed that a fireman's daily rate for an 8-hour day is $5.6109.

It is agreed that a fireman's hourly rate for an 8-hour day is $ .7014.

Anderson was originally paid 1½ 8-hr. days at the 12-24 daily 8-hr. rate of $4.6460 .... $6.97	The plaintiff's formula applied to an 8-16 hour fireman who had worked 12 hours on one watch would give him
On the adjustment he was allowed 1½ 8-hrs. days at the 8-16 hour daily rate of $5.6109= $8.41, which gave him an additional check of 1.44	1 8-hr. day .... $5.6109 4 hours overtime at .7014 .... 2.80 ——— $8.41
He was paid in all for 12 hours work........ $8.41	But plaintiff now wants for Anderson: 12 hrs., 1½ 8-hr. dys. at the 12-24 rate, or........ $6.97 4 hrs. overtime at the 8-16 hr. rate of 70.14¢ 2.80 ——— $9.77
This was 12 hrs. at .7014, or 1 day at $5.6109, plus 4 hours overtime at .7014 per hr.	Less .... 8.41 ——— Plaintiff's demand ...$1.36

[191]

EMPLOYEES WERE PAID FULL 8-16 HOUR RATES FOR DAYS AND HOURS WORKED.

Agreed daily rate for 8-16 hr. firemen—per day $5.6109
Agreed daily rate for 8-16 hr. firemen—per hour $ .7014

12-24 Fireman Leimar

	No. of 12-hr. watches	Paid Each Mo.	Paid Sept. '28	Total Paid
MARCH	11	$ 79.10	$13.48	
APRIL	1	7.32	1.10	
MAY	12	86.06	14.93	
JUNE	19	139.03	20.88	
JULY	19	139.03	20.88	
AUGUST	19	132.41	27.50	
	81	$582.95	$98.77	$681.72

81 12-hr. days=121½ 8-hr. days at	$5.6109	=	$681.72
81 12 hr. days=972 hours at	.7014	=	$681.72
81 12-hr. days=			

81 8-hr. dys. at $5.6109 or	$454.48	
324 hours overtime at .7014 or	227.25	681.73

But Plaintiff claims	$582.95	
324 hrs. overtime	227.25	810.20
Less amount paid		681.72
Plaintiff's demand		$128.48

[192]

EMPLOYEES WERE PAID FULL 8-16 HOUR RATES FOR DAYS AND HOURS WORKED.

Agreed daily rate for 8-16 hour fireman—per day	$5.6109
Agreed daily rate for 8-16 hour fireman—per hour	.7014

12-24 Fireman Costa

(Worked each 12 hours watch each month.)

	No. of 12-hr. watches	Paid Each Mo.	Paid Sept. '28	Total paid
MARCH	21	$146.35	$30.39	
APRIL	20	146.35	21.98	
MAY	21	146.35	30.39	
JUNE	20	146.35	21.98	
JULY	20	146.35	21.98	
AUGUST	21	146.35	30.39	
	123	$878.10	$157.11	$1,035.21

123 12-hr. days=184½ 8-hr. days at $5.6109 = 1,035.21

123 12-hr. days=1476 hours at .7014 = 1,035.21+

123 12-hr. days=

123 8-hr. days at $5.6109 or $690.14

492 hrs. overtime at .7014 or 345.08 = 1,035.22

But plaintiff claims

6 months at $146.35= $878.10

492 hours overtime at $ .7014= 345.08 = $1,223.18

Less amount paid 1,035.21

Plaintiff's demand $ 187.97

[193]

Upon consideration of all of the facts, circumstances and equities in the case, I am of the opinion that the adjusted compensation was fairly made and that in the September settlement the carriers paid their employes in full for all overtime.

Another important question, that of accord and satisfaction, is presented in the case. When the September adjustment was made the carriers issued counterprinted pay checks to each individual employe having a claim for overtime. These checks were in the usual form of pay-roll voucher issued in payment for services by the respective railroad companies, with additional words printed on the face of the checks as follows: On the check of the Southern Pacific Company, immediately following the statement of the sum for which payment was made, were printed these words and figures: "FOR ADDITIONAL COMPENSATION ACCOUNT arbitration award between So. Pac. Co. and Ferry Boatmen's Union, Oct. 21, 1927. For March to August, 1928, inclusive." On the check of the Northwestern Pacific Railroad Company were printed these words and figures: "Balance due for period Mar. 1 '28 to Aug. 31 '28 account wage adjustments." And on the reverse side of each check above the signature of the payee, appeared the following words: "Endorse here. This voucher is endorsed as an acknowledgment of receipt of payment in full of account as stated within."

The judgment directed the carriers to put the wages and rules of the award into effect and cause all of said employes to be paid all back pay retroactively or otherwise due to them in accordance with the award. The judgment was in no sense a requirement to pay a liquidated demand, but necessitated an interpretation of the award. The judgment was not one for which the union could enter satisfaction of record, as the individual employes, the 12-hour men, were the actual creditors of the company. [194]

Before the checks were delivered to the employes, the business manager of the union told an official of the carriers "that for each 12-hour watch worked the men were entitled to 4 hours overtime." The official for the carriers said "the company would pay the men what was due them under the award." The official further said in explanation that the checks were issued in the special form above described as he understood the men "contemplated making some technical claims." The carriers construed the award and paid the men the amounts considered due to them, using the form of check above described. Payment was accepted by the men, the check clearly indicating what it was for, and the payees signed "acknowledgment of receipt in full."

From all of the facts and circumstances shown by the evidence, I think it may be inferred that there was a dispute concerning the amount due and that payment was accepted in full satisfaction thereof.

The checks were dated September 30, 1928. On January 9, 1929, counsel for the union made written demand upon the carriers for payment of additional overtime as contended for herein. On October 2, 1931, the employes assigned to the union all claims due them from the carriers, expressly including the claims for wages "from March 1, 1928, to and including December 1, 1928," and all rights which assignors had by reason of the judgment of this Court entered on September 29, 1928. It was not until September 27, 1933, that these proceedings were commenced, two days short of five years after entry of judgment, a delay suggestive of laches.

It seems to me that the facts and circumstances are sufficient to sustain the plea of the carriers of an accord and satisfaction. [195]

Defendants will submit findings of fact and conclusions of law (under Rule 42) in accordance with the views herein expressed.

April 4, 1935.

(Endorsed): Filed Apr 4 1935 [196]

In the Southern Division of the United States District Court for the Northern District of California

Equity No. 1955-S

In the Matter of an Award filed herein October 31, 1927, pursuant to an arbitration held under the act of Congress known as the Railway Labor Act, between The Atchison, Topeka and Santa Fe Railway Company, Northwestern Pacific Railroad Company, Southern Pacific Company and The Western Pacific Railroad Company, as parties of the first part, and certain employes thereof, represented by The Ferryboatmen's Union of California, as the party of the second part.

FIRST PARTIES, Petitioners,

vs.

SECOND PARTY, Respondent.

Equity No. 3635-S

FERRYBOATMEN'S UNION OF CALIFORNIA, a non-profit corporation, FERRYBOATMEN'S UNION OF CALIFORNIA, an unincorporated association, and C. W. DEAL (as the business manager and executive officer of said Union) suing on behalf of himself and all persons interested in the subject matter of this bill in equity. Plaintiffs,

vs.

SOUTHERN PACIFIC COMPANY, a corporation, Defendant.

Equity No. 3636-S

FERRYBOATMEN'S UNION OF CALIFORNIA, a non-profit corporation, FERRYBOATMEN'S UNION OF CALIFORNIA, an unincorporated association, and C. W. DEAL (as the business manager and executive officer of said Union) suing on behalf of himself and the other members of said Union and all persons interested in the subject matter of this bill in equity,

Plaintiffs,

vs.

THE NORTHWESTERN PACIFIC RAILROAD COMPANY, a corporation,

Defendant.

PLAINTIFFS' REASONS FOR NOT APPROVING PROPOSED FINDINGS AND CONCLUSIONS AND PROPOSED MODIFICATIONS, AMENDMENTS AND ADDITIONS.

The plaintiffs herein do not approve of the proposed findings of fact and conclusions of law in the form and with the [197] allegations as prepared by defendants herein, and, in accordance with Rules 22 and 42 of this Court, note their objections and suggestions herein.

1. There should be a ruling on plaintiffs' motion in Case No. 1955-S for an appropriate order to carry into effect the judgment and decree theretofore rendered therein.

2. Any such ruling should state that it is made nunc pro tunc as of September 25, 1933. This is in

accordance with stipulation of the parties appearing on Page 4 of the Record.

3. That part of Paragraph 6 of the conclusions of law commencing at the bottom of Page 17 providing that "defendants have and recover their costs herein" should be deleted. The opinion of the Court pursuant to which defendants prepared findings did not provide for costs and the Court's action in omitting to give defendants costs is proper as in an equity case the Court has discretion to allow or not to allow costs as the circumstances of the case may make just and equitable. In this case working men, in good faith, under legal advice, are attempting to obtain wages claimed to be due them for working 12-hour watches contrary to agreement and they should not be taxed with costs in the light of the Court's power not to penalize them for seeking claimed wages.

4. Plaintiffs object and except to the various statements in the proposed findings and conclusions that the employes were "fully paid" and, in particular, the proposed finding XVI stating that the defendants "did * * * fully pay" to each employe all sums of money due him.

(These findings are, however, in accordance with the opinion of the Court.)

Plaintiffs also object and except to the failure of the Court and the findings to set forth or allege the facts upon which is based the conclusion of full payment and propose that the findings be amended to set forth the facts upon which the Court [198] relies in making such conclusions and finding.

5. Plaintiffs object and except to the statement of proposed finding XVIII (commencing on Page 15) that the employes' demand "necessitated an interpretation of the award." If so, the parts of the award involved should be specified and the alleged controversy of the parties in reference thereto set out as a specific finding.

6. Plaintiffs object and except to the finding that the union could not satisfy the judgment obtained by it herein in its favor.

7. Lines 12-14 of proposed finding XVIII (Page 16) purport to state that the official for the carriers "further said in explanation" a special form of check was used because he understood the men contemplated making some technical claim.

The record is undisputed that no such statement was ever communicated to any employe or any union representative. The official representing the carriers repeatedly stated that he never discussed the matter with the union (R. p.) and, therefore, he could not have communicated any such statement to the union. The findings read as if such a communication took place in the course of conversation with a representative of the union.

Hancock expressly stated that he did not tell the men why he issued the checks in the form they were actually issued (R. p. 87).

8. Plaintiffs object and except to said statement in its present form and ask that the findings be amended to conform to the undisputed record to show that no such statement was ever communicated to the union or to any employe.

The official for the carriers did testify that the checks were used because of such claim but did not testify that he ever told anyone of his reasons.

9. In connection with the same findings plaintiffs object to the omission of the following further statement of said official which [199] appears in the record without dispute and asks that the finding be modified to include the following (T. p. 58): "Said official of the carriers told the said business manager of the union 'We will pay the men what we think they are entitled to, what the award says they should be paid, and if there is anything wrong we will take it up afterwards, as we have done in the past' ". There is no contradiction of Deal's testimony that in his conference with Hancock "there was no difference of opinion". (T. p. 43)

10. Proposed finding XIX should state the undisputed fact that neither the amounts due the men nor the method of computing the same was ever discussed by any official representing the carriers, with the men, or their representative. Hancock's testimony (T. pp. 76, 77) Hancock said he prepared the wage checks without any previous discussion with the union (T. pp. 77, 81) or its attorneys (T. p. 80).

11. Plaintiffs object and except to the finding that there was a "dispute concerning the amount due" in view of the uncontradicted evidence that the same was never discussed between the parties and likewise object and except to the finding that the checks were accepted "in full satisfaction" in view of the undisputed testimony that all wage checks under the union practice and custom of the carriers were to be cashed subject to correction there-

after. This finding is particularly necessary in view of Hancock's undisputed promise to correct them, as noted in objection 9 hereof.

12. There should be a finding that it was the uniform and regular practice of the carriers to correct and adjust all wage checks without exception and without objection regardless of the fact that they were endorsed as received in full.

13. There should be a finding that in attempting to secure the abolition of 12-hour watches the men claim that they were motivated by the desire to abolish a system which was deemed unsafe and [200] dangerous. (R. p. 175)

14. There should be a finding that the men during the period of controversy worked all the watches to which they were assigned by the carriers, and that none of the men were involved or asigned to 8-hour watches but were assigned to 12-hour watches by the carriers, and that they were to be paid a monthly wage for all assigned watches.

15. There should be a finding as to the number or hours in excess of eight worked by each man so that the court on appeal will be in a position to enter a final decree in the event of reversal on appeal.

Respectfully submitted,

DERBY, SHARP, QUINBY & TWEEDT,
Attorneys for Plaintiffs.

[Endorsed] Due receipt of a copy of the within Reasons for not approving Findings etc. is hereby acknowledged this 8th day of June, 1935.

HENLEY C. BOOTH & A. A. JONES
Attys. for S. P. Co. & N. W. P. R. R. Co.

Lodged June 8, 1935. [201]

[Title of Court and Cause—Nos. 1955, 3635-S and 3636-S.]

SPECIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW.

I.

The above entitled cases are the outgrowth of an award [202] filed with the Clerk of this Court on October 31, 1927, pursuant to an arbitration held under the Act of Congress known as the Railway Labor Act. (44 Stat. p. 577; 45 USCA Sec. 151, et seq.)

The present controversy is between defendant railroads and the assignee of their employes. An accounting and additional back pay is sought for what plaintiff claims to have been overtime work performed during a six-months' period from March 1, 1928, to September 1, 1928, and not paid for. The railroads claim that these employes were fully paid for that period.

In 1925, the Atchison, Topeka & Santa Fe Railway, Northwestern Pacific Railroad Company, Southern Pacific Company and the Western Pacific Railroad (hereinafter called the carriers), had separate agreements covering "hours of service, working conditions and rates of pay" with their employes classified as marine firemen, deckhands, cabin watchmen, night watchmen, and matrons (hereinafter called the union), "employed on passenger, car and automobile ferries, tugs towing car floats and fire

boats" operated by the carriers on San Francisco Bay.

II.

On January 7, 1927, the carriers entered into an agreement with the union under said Railway Labor Act to submit to arbitration certain demands of employes for increases in pay and changes in working conditions. A copy of the agreement is attached to defendant's answer in each case, and marked Exhibit "B". The agreement provided: "The specific questions to be submitted to the Board for decision are whether or not there shall be any increase in the wages or changes in working Rules Nos. 6 and 8 of the employes of these railroads. * * *"

Rule 6 then read: "Assigned crews, except as hereinafter provided, will work either on basis of: (a) Twelve (12) hours on watch, then twenty-four (24) hours off watch, without pay for time [203] off, or (b) Eight (8) hours or less on watch each day for six (6) consecutive days." Then follows a list of "exceptions", some of which will be referred to later.

Rule 8 then read: "The monthly salary now paid the employes covered by this agreement shall cover the present recognized straight time assignment. All service hourage in excess of the present recognized straight time assignment shall be paid for in addition to the monthly salary at the pro-rata rate."

The specific questions submitted under Rule 6 were: "(a) Shall the rule remain as written, or (b) shall the portion of the rule down to the word 'ex-

ceptions' be changed so as to read: 'Assigned crews will work on the basis of eight (8) hours or less on watch each day for six (6) consecutive days'."

The specific questions submitted under "Rule 8—Overtime" were: "(a) Shall the present rule providing for pro-rata rates of pay for overtime remain in effect, or (b) Shall the verbiage of the rule be modified to provide for time and one-half for overtime after eight (8) hours when there is no relief crew waiting under pay?"

In its award, a copy of which is attached to Plaintiffs' Bill in each case as Exhibit "A", the board increased wages $10 per month, fixing the rates of pay as follows:

Passenger and car ferries, and tugs towing car floats:

Firemen	$146.35	per month
Deckhands	139.40	" "
Cabin Watchmen	139.40	" "
Night Watchmen	120.00	" "
Matrons	85.00	" "
Fire Boats:		
Firemen	97.57	" "
Deckhands	92.94	" "

The award changed Rule 6 to read as follows: "Rule 6. Assigned crews will work on the basis of eight (8) hours or less on watch each day for six (6) consecutive days." [204]

The award affirmed Rule 8, above quoted.

Petition for impeachment of the award filed by the carriers was dismissed by this Court and the award confirmed. Upon appeal, the decision of this Court was affirmed by the Circuit Court of Appeals on August 20, 1928. Atchison, T. & S. F. Ry. Co., et al., v. Ferryboatmen's Union of Cal. 28 F. (2) 26.

On May 19, 1928, pending the appeal from decision of this Court to the Circuit Court of Appeals, the carriers and the union entered into a stipulation, the pertinent part of which reads as follows:

> "1. That the ten dollars ($10.00) per month increase made by said award is to be put into effect and paid beginning May 1, 1928, and is to remain in effect until April 1, 1929, and thereafter subject to the 30-day provision in the existing contracts between the Ferryboatmen's Union of California and the respective carriers, copies of which contracts are exhibits in this case and are on file in the records of this Court.
>
> "2. That the $10.00 per month increase is to be retroactively paid to January 1, 1927; payment of such retroactive increase is to be made to the employees in service during all or any part of the period from and including January 1, 1927, to and including April 30, 1928, as early as practicable and not later than June 15, 1928.
>
> "3. That if the above entitled Circuit Court of Appeals affirms the decree confirming the

award the retroactive date of the new watch rules which are a part of that award shall be advanced from November 1, 1927, to March 1, 1928.

"4. On the coming down of the remittitur or mandate from the Circuit Court of Appeals to the District Court the judgment of the District Court shall incorporate and confirm the terms of this stipulation irrespective of whether said Circuit Court of Appeals affirms or reverses the judgment and order of the District Court heretofore rendered herein."

After affirmance by the Circuit Court of Appeals, this court, on September 29, 1928, entered a judgment incorporating the award and said stipulation.

III.

A copy of the judgment, which embodies said stipulation [205] as well as the award of the Arbitration Board, is set forth in full as Exhibit "A" in Plaintiffs' Bills in each suit, and is incorporated by reference in the answers of defendants, Southern Pacific Company and Northwestern Pacific Railroad Company, in each case.

Copies of the agreements of 1925 between the employees represented by their union, on the one hand, and defendants Southern Pacific Company and Northwestern Pacific Railroad Company, on the other, fixing wages and working conditions are set forth as Exhibit "A" in the answers of defendants in each case.

IV.

During the period from and including March 1, 1928, to September 1, 1928, the carriers, as appears by their answers, continued in employment in the same capacities certain of their employes "who had formerly and prior to said arbitration agreement been employed as so-called '12-hour men', and so continued them upon the same basis or hours of service and on the same regular assigned watches as they and all of the so-called 'former 12-hour men' had been employed prior to said arbitration agreement."

During the pendency of the appeal the carriers, in accordance with the award and stipulation, paid the $10 per month wage increase to all employes. On September 26, 1928, the mandate of the Circuit Court of Appeals affirming the decree of this court was filed herein.

V.

On September 30, 1928, the carriers made payment to their employes for overtime, the amounts so paid being ascertained by the application of the following formula to each individual work record:

> "Memorandum as to application of (313 divisor) wage rates and method of computing back pay for Marine Firemen, Deckhands, Cabin Watchmen, and Night Watchmen, serving on 12-hour watch assignments, and who were accorded 48-hour week under Arbitration Award. [206]

Monthly, Daily and Hourly Rates of Pay
are as follows:

Classification	Monthly Rate	Daily (8-Hour) Rate	Hourly Overtime Rate
Passenger and Car Ferries and Tugs Towing Car Floats			
Fireman	$146.35	$5.6109	.7014¢
Deckhand	139.40	5.3444	.6681¢
Cabin Watchman	139.40	5.3444	.6681¢
Night Watchman	120.00	4.6006	.5751¢
Matron	85.00	3.2588	.4073¢

Employes who served on twelve (12) hour watch assignments, (56-hour week) are entitled to the benefits of forty-eight (48) hour week, in way of additional compensation, commencing with March 1st, 1928. That is, (except on Fire Boats where there is no change) they should receive the same compensation as would have accrued to eight (8) and sixteen (16) hour assigned men, working the same number of hours.

It is concluded that the best way to arrive at the balance due any such individual, is to take the total number of eight (8) hour days, and the number of hours overtime served during a month, and multiply the same by the above enumerated daily and hourly rates, then allow as additional compensation, the difference between the total so obtained and the amount of compensation (exclusive of any special adjustments) the employe has already received for that month. In most instances this can be

reduced to a certain additional amount per day or hour, and so shown on the pay-roll for more complete record purposes.

Care should be exercised to see that credit is taken for back pay allowances on special payrolls for months of March and April, 1928, the $10.00 per month wage increase allowed, being included on regular payroll commencing with May 1st.

Under above, individual back pay allowances for months of March, April, May, June, July and August, should be computed separately for each month, but all included on one payroll, that one paycheck may be issued to cover all that is due any employe. For month of March make additional allowance only in connection with watches that were commenced at midnight of Feb. 29th—March 1st, 1928, or thereafter. For August include on back payroll only watches commencing prior to midnight of Aug. 31st-Sept. 1st, 1928.

Commencing with Sept. 1st, 1928, such employes involved should be compensated on the new (48-hour week) basis on regular payrolls. Hours of service assignments as provided for in Rule 6 and its exceptions as contained in the Arbitration Award, should be made effective as rapidly as practicable."

It is hereby found that the rates per hour and per day [207] contained in the foregoing formula were correctly computed and applied.

VI.

When the original proceedings were had, the Ferryboatmen's Union of California, to which had been theretofore assigned the claims of the individual employes, was an unincorporated association. On October 2, 1931, the union was incorporated as a nonprofit corporation under the laws of California, and on the same day, the unincorporated union assigned to the corporation all of its rights and interest in said claims of the employes and in the judgment of this court, and the corporation now appears as the plaintiff herein seeking in equity an enforcement of the decree in the original proceeding; the suit against the Atchison, Topeka, Santa Fe Railway Company has been settled; the Western Pacific Railroad has, by stipulation of counsel, agreed to abide by the final decision herein. The only defendants now before the court are the Southern Pacific Company and the Northwestern Pacific Railroad Company.

VII.

The union filed three several pleadings, all involving the same subject matter and concerning which there could be under the circumstances, but a single recovery. In the original proceeding, Case 1955-S, there was filed a motion "that the Court make such other orders as will be necessary or proper to carry into effect the judgment and decree heretofore entered herein", including a reference to a commissioner to ascertain the amounts due. The union also filed, in Case 1955-S, an ancillary

bill to enforce the judgment and also filed separate bills in equity (Cases Nos. 3635-S and 3636-S) against each carrier for an accounting. In each suit or proceeding the same relief was sought and therefore the proceedings and suits above referred to were consolidated, tried and submitted for decision as one case. Motions that plaintiff elect its remedy were denied. [208]

VIII.

Defendants, in their several answers, affirmatively pleaded that a dispute, as defined under the provisions of the Railway Labor Act (U. S. Code Supp. II, Title 45, Sec. 151, et seq.) existed between them and their employes as to the meaning and application of the award and that this Court had no jurisdiction to entertain either or any of plaintiff's causes of action; the Court found and now finds it has jurisdiction of the parties and subject matter.

IX.

The evidence shows that the award changed Rule 2 of each 1925 working agreement by increasing the rate of pay as above specified, but the following language of the rule remained unchanged: "Note: Employes working broken assignments will be paid in following manner: (a) On 8 and 16 watches, allow for number of days worked on basis of 12 times the monthly salary, divided by 313. (b) On 12 and 24 watches, allow one and one-half days for each watch worked, on basis of 12 times the monthly sal-

ary divided by 365. * * * Above applies to employes whose monthly assignment is broken as well as to relief employes and those in extra service."

The award affirmed Rule 8 defining overtime, above quoted, and left unchanged Rule 9, relating to fixing overtime rate, as follows: "Rule 9. To compute the hourly overtime rate divide twelve times the monthly salary by the present recognized straight time annual assignment. Note: Under above the hourly overtime rates, for employes working different assignments, will be arrived at in the following manner: (a) On 8 and 16 watches, divide 12 times the monthly salary by 2504. (b) On 12 and 24 watches, divide 12 times the monthly salary by 2920."

Under said award, eight consecutive hours constituted a day's work with certain exceptions not applicable to the [209] plaintiffs' assignors. Under the 1925 agreement and until changed by the award assigned crews worked either on the basis of (a) twelve hours on watch, then twenty-four hours off watch, without pay for time off, or (b) eight hours or less on watch for six consecutive days. The award eliminated the twelve-hour watch, establishing hours of service as in Rule 6 above quoted, with the exceptions above referred to.

Following the award, the carriers continued to assign certain crews and employes from March 1, 1928, to August 31, 1928, inclusive, under the former twelve-hour watch, paying the men at the increased

monthly rate, but nothing for overtime until the adjustment was made in September, 1928; under the 1925 agreement a twelve-hour man was not entitled to overtime until he worked twelve hours on watch; that no time over twelve hours on watch is involved here, all time over twelve hours on a single watch having been fully paid.

X.

The evidence shows the purpose of the carrier's formula, above quoted, was to equalize the pay of the 12 and 24-hour men who worked during the period March 1 to August 31, 1928, with the pay of the 8 and 16-hour men who worked during the same period; that the straight-time rate and the overtime rate of the carriers were and are the same; and that under the adjustment made by the formula, the hourly and daily rate of compensation of the 12 and 24-hour men was exactly the same as that of the 8 and 16-hour men. That the rate of pay here contended for by the union would give the 12 and 24-hour men a preference in pay of about eighteen per cent. per hour worked over the pay of the 8 and 16-hour men when both classes were working on regular assigned watches; that before the award, the 12-hour men worked more hours per month than the 8-hour men on regular assigned watches, and their hourly earnings were less than the 8-hour men, there being thereby created an [210] inequality of from 10 to 13 per cent. against

the 12-hour men because while the monthly pay of both classes on regular assigned watches was the same.

XI.

There are two distinct classes of claims involved herein. There are, first, the 12 and 24-hour men who did work all of the assigned watches in a month; that is, the 20 or 21 twelve-hour watches in the month, and, second, those men who worked less than the 20 or 21 twelve-hour watches and who are called broken assignment men. Over 25 per cent. of the claims are for broken assignments which were not payable on the basis of a full month's pay but adjustable under Rule 2, hereinbefore referred to. One of the principal objects of the arbitration was to equalize the pay between these two classes; that by the September adjustment plus what they had already received under said stipulation, the 12-hour men got exactly what the 8-hour men were paid when they worked 8 hours straight time and 4 hours overtime.

XII.

The evidence shows that firemen who worked all 12-24 watches in a calendar month were fully paid as illustrated by the following: [211]

12-24 FIREMEN—RATES OF PAY. MARCH 1-AUGUST 31, 1928.

Showing rates originally paid and rates used in adjustment of September, 1928.

Firemen who worked all 12-24 watches in a calendar month.

A	B
Rate paid before Sept. adjustment	Rates used in Sept. adjustment
The monthly rate for Firemen was........$146.35 The firemen had been paid that amount before the Sept. Adjustment for a month's work of 20 or 21, 12-hour watches.	21 watches 21 12-hr. watches= 31½ 8-hr. days. 31½ 8-hr. dys. x $5.6109=$176.74 Less amount of monthly salary already paid.......... 146.35 Adjustment check....................$ 30.39
	20 watches 20 12-hr. watches= 30 8-hr. dys. 30 8-hr. dys. x $5.6109= $168.33 Less amount of monthly salary already paid.......... 146.35 Adjustment check....................$ 21.98

[212]

XIII.

The evidence shows that any one employe who worked only one 12-hour watch during any one month was fully paid as illustrated by the following specific case:

> CONRAD ANDERSON—Fireman—on a 12-24 hour assignment. No. 2 on Plaintiff's Exhibit 8a.—21 watch assignment.
> Worked only one 12-hour watch in August, 1928.

A fireman's daily rate for an 8-hour day is $5.6109.
A fireman's hourly rate for an 8-hour day is $ .7014.

Anderson was originally paid 1½ 8-hr. days at the 12-24 daily 8-hr. rate of $4.6460 .... $6.97
On the adjustment he was allowed 1½ 8-hrs. days at the 8-16 hour daily rate of $5.6109= $8.41, which gave him an additional check of $1.44

He was paid in all for 12 hours work........ $8.41
This was 12 hrs. at .7014, or 1 day at $5.6109, plus 4 hours overtime at .7014 per hr.

The plaintiff's formula applied to an 8-16 hour fireman who had worked 12 hours on one watch would give him

1 8-hr. day	$5.6109
4 hours overtime at .7014	2.80
	$8.41

But plaintiff now demands for Anderson:

12 hrs., 1½ 8-hr. dys. at the 12-24 rate, or........	$6.97
4 hrs. overtime at the 8-16 hr. rate of 70.14¢	2.80
	$9.77
Less	8.41
Plaintiff's demand ...	$1.36

[213]

XIV.

The evidence shows that employes who worked on "broken assignments" were fully paid for the days and hours worked, as illustrated by the following specific case:

Daily rate for 8-16 hr. firemen—per day $5.6109
Daily rate for 8-16 hr. firemen—per hour $ .7014

12-24 hour Fireman Leimar

	No. of 12-hr. watches	Paid Each Mo.	Paid Sept. 1928	Total Paid
MARCH	11	$ 79.10	$13.48	
APRIL	1	7.32	1.10	
MAY	12	86.06	14.93	
JUNE	19	139.03	20.88	
JULY	19	139.03	20.88	
AUGUST	19	132.41	27.50	
	81	$582.95	$98.77	$681.72

81 12-hr. days=121½ 8-hr. days at $5.6109 = $681.72
81 12 hr. days=972 hours at .7014 = $681.72
81 12-hr. days=

81 8-hr. dys. at $5.6109 or $454.48
324 hours overtime at .7014 or 227.25 681.73

But Plaintiff claims $582.95
324 hrs. overtime 227.25 810.20
Less amount 681.72

Plaintiff's demand $128.48

[214]

XV.

The evidence shows that the employes were paid full 8-16 hour rates for days and hours worked, as well as overtime, as illustrated by the following specific case:

Daily rate for 8-16 hour fireman—per day	$5.6109
Daily rate for 8-16 hour fireman—per hour	.7014

12-24 Fireman Costa
(Worked each 12 hours watch each month.)

	No. of 12-hr. watches	Paid Each Mo.	Paid Sept. 1928	Total paid
MARCH	21	$146.35	$30.39	
APRIL	20	146.35	21.98	
MAY	21	146.35	30.39	
JUNE	20	146.35	21.98	
JULY	20	146.35	21.98	
AUGUST	21	146.35	30.39	
	123	$878.10	$157.11	$1,035.21

123 12-hr. days=184½ 8-hr. days at $5.6109 = 1,035.21
123 12-hr. days=1476 hours at .7014 = 1,035.21+
123 12-hr. days=
  123 8-hr. days at $5.6109 or $690.14 =
  492 hrs. overtime at .7014 or 345.08 =

1,035.22

But plaintiff claims
6 months at $146.35= $878.10
492 hours overtime at $ .7014= 345.08 = $1,223.18

Less amount paid........ 1,035.21

Plaintiff's demand .... $ 187.97

[215]

XVI.

It is hereby found that each defendant railroad did with respect to its employes who, as aforesaid, assigned their claims to said unincorporated union, fully pay to such employe by said September, 1928, adjustment all sums of money then due, owing or unpaid him under said award, stipulation or judgment and that each of the defendants has fully complied with said award, stipulation and judgment.

XVII.

The evidence shows that when said September, 1928, adjustment was made the carriers issued and delivered counterprinted pay checks to each individual employe having a claim for overtime. These checks were in the usual form of pay-roll voucher issued in payment for services by the respective railroad companies, with additional words printed on the face of the checks as follows: On each adjustment of the Southern Pacific Company, immediately following the statement of the sum for which payment was made, were printed these words and figures: "For additional compensation account arbitration award between So. Pac. Co. and Ferry Boatmen's Union, Oct. 21, 1927. For March to August, 1928, inclusive." On each adjustment check of the Northwestern Pacific Railroad Company were printed these words and figures: "Balance due for period Mar. 1, '28 to Aug. 31, '28 account wage adjustment." And on the reverse side of each of said checks issued to the employes of the two railroads above mentioned, and above the signature of the

payee, appeared the following words: "Endorse here. This voucher is endorsed as an acknowledgment of receipt of payment in full of account as stated within."

XVIII.

The evidence shows that the judgment directed the carriers to put the wages and rules of the award into effect and cause all of said employes to be paid all back pay retroactively [216] or otherwise due to them in accordance with the award. The judgment was not a liquidated demand, but necessitated an interpretation of the award. The judgment was not one for which the union could enter satisfaction of record, as the individual employes were the actual judgment creditors of the company.

Before the checks were delivered to the employes, the business manager of the union and the representative of its members under the Railway Labor Act, stated to an official of the carriers "that for each 12-hour watch worked the men were entitled to 4 hours overtime." The official for the carriers said "the company would pay the men what was due them under the award." The official further said in explanation that the checks were issued in the special form above described as he understood the men "contempleted making some technical claims." The carriers construed the award and paid the men the amounts they considered due to the men, using the form of check above described. Payment was accepted by the men, the check clearly indicating what it was for, and the payee in each case signing acknowledgment of receipt in full.

XIX.

From all of the facts and circumstances shown by the evidence, it is hereby found that there was a dispute concerning the amount due and the payments represented by the aforementioned checks and that they were accepted in full satisfaction thereof; in each case the defendant carriers, in their answers, set forth the affirmative plea that by reason of the foregoing facts the employes released them from all claims and demands for or on account of having worked on 12-24 hour watches or more during the period March 1st to August 31st, 1928, both days inclusive. The facts and circumstances are sufficient to sustain the defense of the carriers of an accord and satisfaction and of a release. [217]

CONCLUSIONS OF LAW.

As conclusions of law from the foregoing special findings of fact, and from the admissions in the pleadings, the Court now decides:

1. That the controversy between the plaintiff and each of the defendants is not one which is required by the Railway Labor Act of Congress, either as it originally stood or as it has since been amended, to be submitted to a reconvened Board of Arbitration;

2. That each controversy referred to in the foregoing conclusion of law is justiciable in this Court and that this Court has original jurisdiction of the parties and of the subject matter of each of said controversies;

3. That the circumstances of the receipt, endorsement and cashing of the vouchers referred to in the foregoing findings were such as to constitute an accord and satisfaction of each and all of the plaintiffs' demands against the defendants sued upon by by plaintiffs, and also a release of each and all of the said demands;

4. That by stipulation of plaintiff and defendant Western Pacific Railroad Company, the judgment of this Court in favor of defendant Southern Pacific Company and Northwestern Pacific Railroad Company shall be applicable to defendant Western Pacific Railroad Company;

5. That the terms of the award and judgment of this Court have been fully carried out and performed by defendants with respect to all time worked by plaintiffs' assignors and sued on or involved herein;

6. That defendants are, and each of them is, entitled to a judgment that plaintiff take nothing by any or all of its said actions, suits or proceedings and that defendants have and [218] recover their costs herein against plaintiff.

Let a judgment be entered accordingly.

Done in open court this 22nd day of July, 1935.

A. F. ST. SURE,
United States District Court Judge.

[Endorsed]: Receipt of copy. Service of the within Special Findings of Fact and Conclusions of Law is admitted this 24th day of April, 1935.

DERBY, SHARP, QUINBY & TWEEDT,
Attorneys for Plaintiffs and Petitioners.

Filed Jul. 22, 1935. [219]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 1955 In Equity

IN THE MATTER OF AN AWARD FILED HEREIN OCTOBER 31, 1927, pursuant to an arbitration held UNDER THE ACT OF CONGRESS known as the RAILWAY LABOR ACT, between the Atchison, Topeka and Santa Fe Railway Company, Northwestern Pacific Railroad Company, Southern Pacific Company, and The Western Pacific Railroad Company, as parties of the first part and certain employes thereof, represented by the Ferryboatmen's Union of California, as the party of the second part.

No.........................

FERRYBOATMEN'S UNION OF CALIFORNIA, a non profit corporation, FERRYBOATMEN'S UNION OF CALIFORNIA, an unincorporated association and C. W. DEAL (As the business manager and executive officer of said Union) suing on behalf of himself and the other members of said Union and all persons interested in the subject matter of this bill in equity, Plaintiffs,

vs.

NORTHWESTERN PACIFIC RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY and THE WESTERN PACIFIC RAILROAD COMPANY, corporations, Defendants.

FINAL DECREE

The issues arising in this cause upon the "Ancillary Bill to enforce Decree already rendered herein" and the answers thereto were consolidated for trial with Cause No. 3635-S, entitled "Ferryboatmen's Union of California, et al, v. Southern Pacific Company, a corporation," and with Cause No. 3636-S entitled "Ferryboatmen's Union of California, et al., v. Northwestern Pacific Railroad Company, a corporation," and came on to be heard and was heard and argued by counsel and submitted for decision and thereupon, upon consideration thereof, and the Court [220] having filed its Findings of Fact and Conclusions of Law herein, it was ordered, adjudged and decreed as follows, viz:

It is ordered, adjudged and decreed, in accordance with said Findings of Fact and Conclusions of Law herein, that plaintiffs take nothing herein by their Ancillary Bill herein referred to and that defendants Northwestern Pacific Railroad Company, Southern Pacific Company and Western Pacific Railroad Company, corporations, go hence without day, without costs, costs of said consolidated trial being taxable in said suits 3635-S and 3636-S.

A. F. ST. SURE,

Judge.

Dated: San Francisco, California, August 1, 1935.

[Endorsed]: Filed and Entered August 1, 1935.

[221]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 3635-S In Equity

FERRYBOATMEN'S UNION OF CALIFORNIA, a non-profit corporation, FERRYBOATMEN'S UNION OF CALIFORNIA, an unincorporated association and C. W. DEAL (as the business manager and executive officer of said Union) suing on behalf of himself and all persons interested in the subject matter of this bill in equity.

Plaintiffs,

vs.

SOUTHERN PACIFIC COMPANY, a corporation,

Defendant.

FINAL DECREE

This cause was consolidated for trial with Cause No. 1955, entitled "Ferryboatmen's Union of California, Incorporated, etc. v. Southern Pacific Company, et al.," and with Cause No. 3636-S, entitled "Ferryboatmen's Union of California, incorporated v. Northwestern Pacific Railroad Company, a corporation," and came on to be heard, and was heard and argued by counsel, and submitted for decision and thereupon, upon consideration thereof, and the Court having made and filed its Findings of Fact

and Conclusions of Law in Case 1955, to which reference is hereby made, it was ordered, adjudged and decreed as follows, viz:

It is ordered, adjudged and decreed in accordance with its Findings of Fact and Conclusions of Law in Case 1955, that plaintiffs take nothing herein; that the said defendant Southern Pacific Company, a corporation, go hence without day, and that it recover from said plaintiffs, Ferryboatmen's Union of California, a non-profit corporation, and C. W. Deal, its costs herein expended, the same to be taxed by the Clerk of the Court, and for execution therefor. Costs taxed at $120.80.

A. F. ST. SURE,
Judge.

Dated: San Francisco, California, August 1st, 1935.

[Endorsed]: Filed and Entered Aug. 1, 1935. [222]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 3636-S In Equity

FERRYBOATMEN'S UNION OF CALIFORNIA, a non profit corporation, FERRYBOATMEN'S UNION OF CALIFORNIA, an unincorporated association and C. W. DEAL (as the business manager and executive officer of said Union) suing on behalf of himself and all persons interested in the subject matter of this bill in equity,

Plaintiffs,

vs.

NORTHWESTERN PACIFIC RAILROAD COMPANY, a corporation,

Defendant.

FINAL DECREE

This cause was consolidated for trial with Cause No. 1955, entitled "Ferryboatmen's Union of California, Incorporated, etc., v. Southern Pacific Company, et al.," and with Cause No. 3635-S, entitled "Ferryboatmen's Union of California, Incorporated v. Southern Pacific Company, a corporation." and came on to be heard, and was heard and argued by counsel, and submitted for decision and thereupon, upon consideration thereof, and the Court having made and filed its Findings of Fact and Conclusions of Law in Case 1955 to which ref-

erence is hereby made, it was ordered, adjudged and decreed as follows, viz:

It is ordered, adjudged and decreed, in accordance with its Findings of Fact and Conclusions of Law in Case 1955, that plaintiffs take nothing herein; that the said defendant Northwestern Pacific Railroad Company, a corporation, go hence without day, and that it recover from the said plaintiffs, Ferryboatmen's Union of California, a non-profit corporation, and C. W. Deal, its costs herein expended, the same to be taxed by the Clerk of the Court, and for execution therefor. Costs taxed at $120.80.

A. F. ST. SURE,
Judge.

Dated: San Francisco, California, August 1, 1935.

[Endorsed]: Filed and Entered August 1, 1935. [223]

[Title Court and Causes Nos. 1955-S, 3635-S, and 3636-S.]

ENGROSSED STATEMENT OF EVIDENCE FOR USE ON APPEAL UNDER EQUITY RULE No. 75. [224]

Proceedings before Honorable A. F. St. Sure, San Francisco, California, on September 13, 14, 24 and 25, 1934.

Present: Joseph C. Sharp Esq. of Messrs. Derby, Sharp, Quinby & Tweedt, on behalf of plaintiff.

Henley C. Booth Esq. and A. A. Jones Esq. on behalf of defendants.

STATEMENTS AND STIPULATIONS BY COUNSEL

MR. SHARP: There are three cases on the calendar this morning, your Honor, Nos. 1955, 3635 and 3636. I take it counsel will stipulate that all three cases may be consolidated and tried as one case.

MR. BOOTH: We reserve the right at the conclusion of the testimony to renew our motion that counsel elect as between the ancillary bill and the independent or original bill in equity.

THE COURT: You can renew your motion and I will make the same ruling denying the motion.

MR. BOOTH: Exception. It is obvious, for the convenience of every one concerned, as well as shortening the record, that all testimony offered or admitted be considered as being offered and admitted in each of the cases insofar as it may be relevant.

THE COURT: Yes.

MR. SHARP: That will be agreeable.

MR. SHARP: In the original action No. 1955 there is pending a motion for an appropriate order of the Court to enforce the judgment based upon the arbitration award and there is a stipulation that any order of the Court may be made nunc pro tunc as of September 25, 1933.

MR. BOOTH: That is agreed to. [225]

MR. SHARP: I will read into the record as evidence on plaintiff's behalf all of the allegations appearing in the answer of the Southern Pacific Company in case No. 3635, which are sub-paragraphs

(a), (b), (c), (d), (e), (f), (g) and (h) of defendant Southern Pacific Company's "Second, Further and Separate Defense"; and all of Paragraph I of said defense down to but not including the paragraph beginning: "This defendant prior to September 30, 1928, fully paid to each of such employes" . . . .

Similar allegations are in all of the pleadings of the defendants and the similar allegations in each pleading of the defendants are hereby offered in evidence.

MR. SHARP: To explain the rule, I have prepared an exhibit which I will place on the board and ask that it be marked for identification Plaintiff's Exhibit No. 1.

TESTIMONY OF CLYDE W. DEAL
for plaintiff

Clyde W. Deal, a witness called for the plaintiff, was duly sworn, examined and testified as follows:

I am the secretary and business manager of the Ferryboatmen's Union of California, plaintiff herein.

MR. SHARP: There is an agreement effective as of January 16, 1925, entered into between the Southern Pacific Company and the Ferryboatmen's Union of California. Said agreement was identified by the witness and duly offered and admitted in evidence as plaintiff's Exhibit No. 2. Said exhibit is not herein set forth in full because it is a copy of the

(Testimony of Clyde W. Deal.)
agreement between Southern Pacific Company and Ferryboatmen's Union of California, a copy of which is attached as Exhibit A to Southern Pacific Company's Answer in Case No. 3635-S.

The arbitration agreement referred to in the pleadings was identified by the witness and duly offered and admitted in evidence as plaintiff's Exhibit No. 3. Said exhibit is not herein repeated because a copy thereof is attached as Exhibit B to defendant Southern [226] Pacific Company's Answer in Case No. 3635-S.

The arbitration award referred to in the pleadings was identified by the witness and duly offered and admitted in evidence as plaintiff's Exhibit No. 4. Said Exhibit is not herein repeated because a copy of said arbitration award is included in the copy of the judgment in Case No. 1955, which is attached as an exhibit to plaintiffs' complaint in Case No. 3635-S.

MR. SHARP: For the convenience of the Court I have prepared a short exhibit showing Rule 6 as it existed before the arbitration award and have marked in red the matter deleted by the award. Thereupon the exhibit was marked plaintiff's Exhibit No. 5.

By stipulation of the parties there was duly offered and admitted in evidence as plaintiff's Exhibit No. 6 the stipulation made by the parties in May, 1928. Said stipulation is not repeated herein because the material portions thereof are included in the

(Testimony of Clyde W. Deal.)
Judgment in Case No. 1955, which Judgment is plaintiff's Exhibit No. 7 herein.

Next was offered and admitted in evidence by consent of counsel a copy of the judgment which was entered by this court on September 29, 1928, in cause numbered 1955, as plaintiff's Exhibit No. 7. Said Judgment is not repeated herein because a copy thereof is attached as an exhibit to plaintiffs' complaint in Case No. 3635-S.

MR. BOOTH: I would like to reserve my formal objection to that, on the ground that it goes partly to the merits of the case, that is, the judgment is objected to in so far as this contains a direction to the railroads or any of them, to pay any amount of money, or to pay money on any basis stated in the judgment. The point of the objection is that the Railway Labor Act does not confer power on the court in a petition to impeach an award, in passing on a pettion to impeach an award, to make any order or direction for the payment of money. Of course, that is involved in the merits of the case [227] and I merely want to preserve the point so that the judgment will not go in evidence.

The court overruled the objection; exception allowed.

The witness (Mr. Deal) stated that, after the judgment was entered, certain payments were made on account of the back pay referred to in the judgment. The amounts paid are set forth in two exhibits furnished to the witness by the carriers. Both exhibits

(Testimony of Clyde W. Deal.)

were duly offered and admitted in evidence as plaintiff's Exhibits 8-A and 8-B. Exhibit 8-A covers the men employed by the Southern Pacific Company and Exhibit 8-B the employees of the Northwestern Pacific Railroad Company.

PLAINTIFF'S EXHIBIT 8-A

was in words and figures as follows: [228]

(Testimony of Clyde W. Deal.)

PLAINTIFFS' EXHIBIT 8-B

was in words and figures as follows: [235]

EXHIBIT "C".

STATEMENT OF SERVICE PERFORMED AND WAGES PAID MARINE EMPLOYES

on 12 hour watches N. W. P. R. R. March 1st, 1928 to Aug. 31st, 1928

	Name of Employe		Amount Back Pay Check Sept. 29, 1928	March		April (Number of 12 hour watches and amount paid)		May		June		July		August		Total of Columns 3 to 8		Total hours overtime in 6 month period	Amt. overtime paid on 12 hr. basis	Add'l amt. overtime paid 9/29/28	Total amount overtime paid
				Wtchs.	Amt. paid	Wtchs.	Amt. paid	Wtchs.	Amt. paid	Wtchs.	Amt. paid	Wtchs.	Amt. paid	Wtchs.	Amt. paid						
	(1)		(2)	(3)		(4)		(5)		(6)		(7)		(8)		(9)		(10)	(11)	(12)	(13)
1	Adamson, G. S.	d	126.55	20	137.40	20	139.40	20	139.40	20	139.40	21	139.40	11	75.57	112	770.57				
2	Cordoza, M.	d	130.00	8	54.96	20	139.40	21	139.40	19	130.53	21	139.40	20	139.40	109	743.09				
3	Collins, M. J.	d	148.87	21	139.40	20	139.40	20	139.40	20	139.40	21	139.40	21	139.40	123	836.40	1/2	.29	.04	.33
4	Connor, Geo. M.	d	29.61					3	20.61	7	45.80	7	48.09	9	61.83	26	176.33	3-3/4	2.16	.35	2.51
5	Detels, Syd. A.	d	140.54	20	139.40	18	123.66	21	139.40	20	139.40	21	139.40	20	139.40	120	820.66				
6	Englund, Nels E.	d	148.87	21	139.40	20	139.40	20	139.40	20	139.40	21	139.40	21	139.40	123	836.40	1/2	.29	.04	.33
7	Helgesson, O. W.	d	140.82	20	139.40	20	139.40	21	139.40	20	139.40	21	139.40	20	139.40	122	836.40				
8	Hokanson, L.	d	148.83	21	139.40	20	139.40	21	139.40	20	139.40	20	139.40	21	139.40	123	836.40				
9	Hunt, W. U. (Urchenko, W.)	d	133.11	17	116.79	18	123.66	21	139.40	20	139.40	20	137.40	20	139.40	116	796.05				
10	Joaquin, M.	d	140.82	20	139.40	20	139.40	21	139.40	20	139.40	21	139.40	20	139.40	122	836.40				
11	Johnson, Alf	d	135.70	20	139.40	19	130.53	21	139.40	13	89.31	21	139.40	20	139.40	114	777.44				
12	Knudsen, S.	d	133.77	20	139.40	20	139.40	21	139.40	17	116.79	20	137.40	20	139.40	118	811.79	4	2.30	.38	2.68
13	Lindekrans, Fred	d	148.83	21	139.40	20	139.40	21	139.40	20	139.40	20	139.40	21	139.40	123	836.40				
14	Mattos, A.	d	101.19	8	54.96	17	116.79	2	13.74	20	139.40	20	139.40	21	139.40	88	603.69				
15	Mowrey, O. R.	d	141.72	21	139.40	20	139.40	20	139.40	20	139.40	19	130.53	21	139.40	121	827.53	1/2	.29	.04	.33
16	Nealon, T.	d	147.17	21	139.40	19	130.53	16	109.92	20	139.40	21	139.40	21	139.40	118	798.05	1/2	.29	.04	.33
17	Nelson, Emil	d	148.55	21	139.40	20	139.40	21	139.40	18	123.66	20	139.40	21	139.40	121	820.66				
18	Stone, A. J. (Oushanoff, A.)	d	144.54	21	139.40	20	139.40	21	139.40	19	130.53	19	130.53	20	137.40	120	816.66				
19	Stamatoff, N.	d	124.89	20	139.40	20	139.40	20	137.40	20	139.40	16	109.92	20	139.40	116	804.92	6-11/12	3.98	.65	4.63
20	Taylor, Pele	d	77.83	21	139.40	19	130.53	13	89.31					11	75.57	64	434.81				
21	Weimann, Geo.	d	143.02	21	139.40	18	123.66	21	139.40	18	123.66	19	130.53	19	130.53	116	787.18	11	6.33	1.04	7.37
22	Olivera, S. N.	d	136.81	20	137.40	20	139.40	21	139.40	20	139.40	20	139.40	20	137.40	121	832.40				
23	Creighton, W. J., Jr.	f	131.86	20	146.35	8	57.72	21	151.51	20	146.35	19	137.08	21	146.35	109	785.36				
24	Herubin, Wm.	f	88.85	13	93.79	9	64.93	10	72.15	14	101.01	15	108.22	13	93.79	74	533.89	1/2	.30	.05	.35
25	Hoag, Leonard	f	114.35	9	64.93	20	146.35	13	93.79	17	122.65	20	144.30	18	129.87	97	701.89				
26	Jacobi, Otto	f	138.22	21	146.35	9	64.93	19	137.08	20	146.35	21	146.35	20	146.35	110	787.41				
27	Jukich, F., Jr.	f	139.44	20	146.35	9	64.93	20	146.35	19	137.08	21	146.35	21	146.35	110	787.41	12-5/12	7.38	1.22	8.60
28	Lucas, Alfred*	f																			
29	Shine, Thomas	f	121.13	13	93.79	20	146.35	20	146.35	20	146.35	20	144.30	12	86.58	105	763.72	12-5/6	7.73	1.08	8.81
30	Taylor, N. D.	f	148.52	20	146.85	20	146.35	21	146.35	20	146.35	21	146.35	20	146.35	122	878.10				
31	Hallett, A. F.†	w	117.59	23	136.27	§23	135.79	§18	101.78	§21	111.41	§24	124.38	§20	103.25	129	712.88				
32	Jones, N. L.	cw	129.66	20	139.40	20	139.40	19	130.53	20	139.40	20	137.40	20	137.40	119	823.53				
			4001.66													3411	23414.42	53-2/3	31.34	4.93	36.27

* Did not work on any 12 hour watches.

† Paid on basis on actual time worked. Exception 12 of Rule 6 of Award.

§ Did not work full 12 hour watches.

(Testimony of Clyde W. Deal.)

The witness stated that these exhibits give the names of the employes, the amount of the back pay check paid by the carrier and shows the number of 12-hour watches worked during the period March to August, 1928. The witness then identified statements as to how the two exhibits had been prepared. By consent of counsel these statements were offered and admitted in evidence as plaintiff's Exhibits 9-A and 9-B. The said

EXHIBIT 9-A

was in words and figures as follows: [237]

Column headed (1) shows the names of those men who are claimed by plaintiff to have been employed by this defendant on said 12-24 hour watches during the six-month period, March to August, 1928, both months inclusive, and whose claims for what plaintiff terms "overtime" are held by plaintiff and herein sued upon. Where an amount is not shown in the Column headed (2) following an alleged employe's name it indicates that, for the reasons therein stated, said alleged employe did not at any time during said six months period work on said 12-24 hour watches which are the subject of plaintiff's claim. Where an amount is shown in said Column headed (2) opposite a name in Column headed (1) it shows that the employe named actually worked during said six months period or a portion thereon on the basis of said 12-24 hour watches and not within any exception contained in Rule 6 of said Agreement "Ex-

(Testimony of Clyde W. Deal.)

hibit A'' hereto or in said Rule 6 as amended by said Award. The capacity in which each employe worked —whether as fireman, deckhand, cabin watchman or night watchman—is shown by appropriate headings and designations.

Column headed (2) shows in dollars and cents the amount actually paid each employe by this defendant by a pay voucher dated September 30, 1928 and cashed by him and the amount thereof received by him during October, 1928.

Said amount in Column headed (2) includes two items; (a) the amount of additional compensation paid said employe arrived at in the manner hereinafter described, and (b) the amount paid said employe for overtime worked more than 12 hours in any one watch during said six months period in addition to the amount theretofore paid said employe for such overtime arrived at as hereinafter explained. The hours represented by said (b) are [238] referred to herein as ''overtime''; the hours represented by said ''a'' are not herein referred to as ''overtime.''

By ''twelve hour watch'' is meant that whether one of said 12 hour men worked 11 hours and 40 minutes or 12 hours and 20 minutes on a watch or assignment on duty, each watch was by consent of said employe treated as a 12 hour watch, as in actual operation such watches balance to a 12 hour average in a cycle of three weeks.

(Testimony of Clyde W. Deal.)

The table or wage base used in calculating said amounts (a) and (b) was as follows:

TABLE "WA"

Class	Monthly Rate	Daily Rate	Hourly Rate
Fireman	$146.35	$5.6109	$0.7014
Deckhand	139.40	5.3444	0.6681
Cabin Watchman	139.40	5.3444	0.6681
Night Watchman	120.00	4.6006	0.5751

Said daily rate was ascertained by dividing twelve times the monthly rate by 313—the number of working days per year on an 8-16 hour assignment; said hourly rate was taken as one-eighth (1/8) of the said daily rate.

Amount (a) was arrived at by taking the number of hours (not exceeding 12 in any one watch) worked by the employe in any one calendar month or portion thereof and dividing that total by eight (8) to ascertain the equivalent number of eight hour days (or fraction of one day) worked by the employe during that month or period; that number of days(and fractional day if any) was then multiplied by the daily rate as shown by the above Table "WA". From that result so obtained there was deducted the amount theretofore paid the employe for services during that calendar month or part month (exclusive of the amount paid for overtime over a twelve hour watch) at the monthly or daily rate

(Testimony of Clyde W. Deal.)

specified in the [239] foregoing Table "WA" and the remainder was allowed as additional compensation as said amount (a).

Overtime over a 12 hour watch was separately computed upon the hourly rate shown in said Table "WA"; from the result was deducted the amount previously paid on account of the same overtime, the remainder being allowed as said amount (b).

The deduction was necessary because the hours of overtime over 12 hour watches actually worked during said six months by said 12-24 hour employes had been paid for from time to time during said six months at rates per hour less than the hourly rates shown in the foregoing Table "WA". Said lesser rates per hour were as follows:

Overtime rates per hour actually paid 12-24 hour men for overtime over 12 hours on watch, March 1-August 31, 1928, inclusive, and paid prior to September 15, 1928.

Class	Per Hour*
Firemen	$.6014
Deckhands	$.5728
Cabin Watchmen	$.5728
Watchmen	$.4932

*The hourly rates shown next above were ascertained by multiplying the monthly rate (as fixed by said award) by 12 and dividing the result by 2920 hours—365, eight hour days—and may be referred to as "12-24 hour overtime rates."

(Testimony of Clyde W. Deal.)

FURTHER DETAILS

The details of said calculations which resulted in the amounts shown in said column headed (2) are further shown in succeeding columns as follows:

In columns headed, respectively, (3), (4), (5), (6), (7) and (8) are shown, respectively, for the calendar months of March, April, May, June, July and August, 1928, as to each employe the number of twelve hour watches he worked that calendar month [240] and the amount in dollars and cents he was paid therefor by this defendant (exclusive of payment for overtime above twelve hours in any one watch) prior to September 30, 1928, and not included in the amount shown in said column headed (2).

In Column headed (9) is shown as to each employe the total of the amounts shown in Columns (3) to (8), inclusive.

The amounts respectively shown in said monthly columns (3) to (8) inclusive were arrived at in the following manner:

When one of said employes worked in a calendar month all of the 12 hour watches that would be produced by a continuous 12-24 hour assignment during that month he received his monthly pay at the rate specified by said award as applicable to his occupation and shown in the first column of the foregoing table headed Table "WA".

Where an employe worked in any one calendar month a less number of 12 hour watches than en-

(Testimony of Clyde W. Deal.)

titled him to a month's pay on the basis prescribed by said award and shown in the foregoing Table "WA" he was paid—during said six months—for that calendar month on the basis of a daily rate of pay on an eight hour basis; that is to say—one and one-half days pay for each 12 hour watch at a daily rate arrived at by taking the number of 12 hour watches for each calendar month in the watch assignment on which the man worked, then adding one-half thereof to arrive at the number of representative or constructive eight hour days, then dividing that result into the monthly rate of pay fixed by the award.

For example: The daily rate of pay for Conrad Anderson, fireman, shown as No. 2 fireman on Exhibit C was for the month of May, 1928, arrived at by taking his full monthly assignment [241] on his watch as 20 watches. The resulting formula was 20 plus 10 = 30; $146.35 = $4.8783 per 8 hours.

———

30

During that month of May Conrad Anderson worked 18 watches of 12 hours each and was paid 18 plus 9 = 27, × $4.8783 = $131.72 which had been paid him for that month prior to the computation which resulted in the pay voucher of September 30, 1928.

(Testimony of Clyde W. Deal.)

DETAIL OF EXHIBIT C AS TO OVERTIME

Some of the said employes who worked in said 12-24 hour watches during said six month occasionally worked more than 12 hours on one watch which overtime has been paid for as hereinbefore described.

Column headed (10) shows the total number of hours of such overtime worked by each employe during said six months period.

Column headed (11) shows the amounts paid during said six months on said 12 hour hourly basis.

Column headed (12) shows additional amount paid for overtime and included in the pay voucher of September 30, 1928.

Column headed (13) shows total amount paid for overtime during said six months period.

By deducting from the amount in Column headed (2) the amount shown in Column headed (12) the result will be the amount paid by said pay voucher of September 30, 1928 for additional compensation for the watches shown in Columns (3) to (8) inclusive.

In the result of all multiplication of hours or days by a rate, hereinbefore referred to, fractions of a cent were treated as a cent only when they equalled or exceeded one-half cent. [242]

(Testimony of Clyde W. Deal.)

SAID EXHIBIT 9-B

was in words and figures as follows:

Column headed (1) shows the names of those men who are claimed by plaintiff to have been employed by this defendant on said 12-24 hour watches during the six-month period, March to August, 1928, both months inclusive—and whose claims for what plaintiff terms "overtime" are held by plaintiff and herein sued upon. Where an amount is not shown in the Column headed (2) following an alleged employe's name it indicates that, for the reasons therein stated said alleged employe did not at any [243] time during said six months period work on said 12-24 hour watches, which are the subject of plaintiff's claim. Where an amount is shown in said column headed (2) opposite a name in column (1) it shows that the employe named (excepting night watchman A. F. Hallett) actually worked during said six months period or a portion thereon on the basis of said 12-24 hour watches, and—with the exception of night watchman Hallett—not within any exception contained in Rule 6 of said Agreement ("Exhibit A" hereto) or in said Rule 6 as amended by said Award. The capacity in which each employe worked—whether as fireman, deckhand, cabin watchman or watchman—is shown by appropriate headings and designations "F", "D", "CW" or "W".

Column headed (2) shows in dollars and cents the amount actually paid each employe by this defendant by a pay voucher dated September 29, 1928,

(Testimony of Clyde W. Deal.)
and cashed by him and the amount thereof received by him during October, 1928.

Said amount in Column headed (2) includes two items (a) the amount of additional compensation paid said employe arrived at in the manner hereinafter described, and (b) the amount paid said employe for overtime worked more than 12 hours in any one watch during said six months period in addition to the amount theretofore paid said employe for such overtime arrived at as hereinafter explained. The hours represented by said (b) are referred to herein as "overtime"; the hours represented by said (a) are not herein referred to as "overtime."

Upon the entry of the judgment (Exhibit "A" to the supplemental and amended complaint herein) this defendant calculated the additional amount due each employe who, during the six months period, March to August, 1928, inclusive, had worked for it as a fireman, deckhand or cabin watchman on the basis of 12 hours on watch, then 24 hours off watch and so on (and night watchmen on basis of one watch on for each consecutive night of three nights [244] then 36 hours off watch and so on); said additional amount was made up of two items (a) additional compensation for time not computed as overtime as hereinafter described as (b); and (b) additional amount due for time worked in excess of 12 hours on any watch and which additional amount is herein referred to as for "overtime". None of said 12-24 hour employes nor night watch-

(Testimony of Clyde W. Deal.)

men worked during said period less than 8 hours on any watch.

The amounts (a) and (b) were added together and resulted in an amount hereby termed (c) which is the same amount shown in the second column of Exhibit "C" hereto as the amount of the pay voucher prepared for the employe and date September 29, 1928, and the amount actually paid him thereon.

Said amount "c" was computed in addition to the rates of pay prescribed by Rule 2 of said award which said rates of pay were in each case of said 12-24 hour employes paid him by a separate and distinct pay voucher or vouchers for such time as he worked for this defendant from and after January 1, 1927, pursuant to the first and second paragraphs of the stipulation quoted in such judgment.

None of said employes (other than said night watchman) as to which said amounts "a" and "b" were computed worked on 12 hour watches under any of the exceptions in Rule 6 of said Award. Night watchmen worked under exception twelve (12) of Rule 6 except that he was assigned to work more than four twelve (12) hour watches four days per week.

By "twelve hour watch" is meant that whether one of said 12 hour men worked 11 hours and 40 minutes or 12 hour and 20 minutes on a watch or assignment on duty, each watch was by consent of said employe treated as a 12 hour watch, as in

(Testimony of Clyde W. Deal.)
actual operation such watches balance to a 12 hour average in a cycle of three weeks. [245]

The table or wage base used in calculating said amounts (a) and (b) was as follows:

TABLE "WA"

Class	Monthly Rate	Daily Rate	Hourly Rate
Fireman	$146.35	$5.61	$0.7025
Deckhand	139.40	5.34	0.67
Cabin Watchman	139.40	5.34	0.67
Night Watchman	120.00	4.60	0.5775

Said daily rate was ascertained by dividing twelve times the monthly rate by 313—the number of working days per year; said hourly rate was taken as one-eighth (1/8) of the said daily rate.

Amount "a" was arrived at by taking the number of hours (not exceeding 12 in any one watch) worked by the employe in any one calendar month or portion thereof and dividing that total by eight (8) to ascertain the equivalent number of eight hour days (or fraction of one day) worked by the employe during that month or period; that number of days (and fractional day if any was then multiplied by the daily rate as shown by the above table. From that result so obtained there was deducted the amount theretofore paid the employe for services during that calendar month or part month (exclusive of the amount paid for overtime over a twelve hour watch) on the monthly or daily rate

(Testimony of Clyde W. Deal.)
specified in the foregoing table and the balance was allowed as additional compensation as said amount (a).

Overtime over a 12 hour watch was separately computed upon the hourly rate shown in said table; from the result was deducted the amount previously paid on account of the same overtime, the remainder being allowed as said amount (b).

The deduction was necessary because the hours of overtime over 12 hour watches actually worked during said six months by [246] said 12-24 hour employes had been paid for from time to time during said six months at rates per hour less than the hourly rates shown in the foregoing table. Said lesser rates per hour were as follows:

Overtime rates per hour actually paid 12-24 hour men for overtime over 12 hours on watch, March 1-August 31, inclusive, and paid prior to September 15, 1928.

Class	Per Hour*
Firemen	$0.6025
Deckhands	0.5750
Cabin Watchmen	0.5750
Watchmen	0.4950

* The hourly rates shown next above were ascertained by multiplying the monthly rate (as fixed by said award by 12 and dividing the result by 2920 hours—365, eight hour days—and may be referred to as "12-24 hour overtime rates."

(Testimony of Clyde W. Deal.)

FURTHER DETAILS

The detail of said calculations which resulted in the amounts shown in said Column headed (2) are further shown in succeeding columns as follows:

In Columns headed, respectively, (3), (4), (5), (6), (7) and (8) are shown, respectively, for the calendar months of March, April, May, June, July and August, 1928, as to each employe the number of twelve-hour watches he worked that calendar month and the amount in dollars and cents he was paid therefor by this defendant (exclusive of payment for overtime above twelve hours in any one watch) prior to September 30, 1928 and not included in the amount shown in said Column headed (2).

In Column headed (9) is shown as to each employe the total of the amounts shown in Columns (3) to (8), inclusive.

The amounts respectfully shown in said monthly columns (3) to (8) inclusive were arrived at in the following manner: [247]

When one of said employes worked in a calendar month all of the 12 hour watches that would be produced by a continuous 12-24 hour assignment during that month he received his monthly pay at the rate specified by said award as applicable to his occupation and shown in the first column of the foregoing table headed Table "WA."

Where an employe worked in any one calendar month a less number of 12 hour watches than entitled him to a month's pay on the basis prescribed by said award and shown in the foregoing Table

(Testimony of Clyde W. Deal.)
"WA" he was paid—during said six months—for that calendar month on the basis of a daily rate of pay on an eight hour basis; that is to say—one and one half days pay for each 12 hour watch at a daily rate arrived at by taking the number of 12 hour watches for each calendar month in the watch assignment on which the man worked, then adding one-half thereof to arrive at the number of representative or constructive eight hour days, then multiplying that result by the daily eight hour rate (as shown in Table "WA") based on monthly rate as fixed by said Award. The daily rate of pay for employes assigned under said twelve (12) and twenty-four (24) watches, was arrived at by multiplying the monthly rate (as fixed by said award) by 12, and dividing the result by 365 eight hour days. For example:

Formula for arriving at a deckhand's fixed daily rate of eight hours:

$139.40 x 12 equals $1672.80 divided by 365 equals $4.583 or fixed as $4.58 per eight hour day.

DETAIL OF EXHIBIT "C" AS TO OVERTIME

Some of the said employes who worked in said 12-24 hour watches during said six months occasionally [248] worked more than 12 hours on one watch, which overtime has been paid for as hereinbefore described.

Column headed (10) shows the total number of hours of such overtime worked by each employe during said six months period.

(Testimony of Clyde W. Deal.)

Column headed (11) shows the amounts paid during said six months on said 12 hour hourly basis.

Column headed (12) shows additional amount paid for overtime and included in the pay voucher of September 29, 1928.

Column headed (13) shows total amount paid for overtime during said six months period.

By deducting from the amount in Column headed (2) the amount shown in Column headed (12) the result will be the amount paid by said pay voucher of September 29, 1928, for additional compensation for the watches shown in Columns (3) to (8) inclusive.

In the result of all multiplications of hours or days by a rate, hereinbefore referred to, fractions of a cent were treated as a cent only when they equalled or exceeded one-half-cent. [249]

The witness went on to testify as follows: On the basis of the carrier's figures I have prepared a statement showing the amount claimed still due on behalf of the men. This statement was prepared by following the overtime rule of the agreement and multiplying the number of 12-hour watches worked between March and August, 1928, by four. The total number of 12-hour watches are shown in Column A on the exhibit. In other words, Column A consists of taking the 12-hour watches as shown on the carrier's exhibit in columns 3, 4, 5, 6, 7 and 8 and adding them up. Column B is the number of overtime hours worked during that period by each man, arrived at by multiplying the number of 12-

(Testimony of Clyde W. Deal.)

hour watches worked by four, because there was four overtime hours worked in each watch.

Column C is the amount of money arrived at after applying the overtime hours worked by the hourly overtime rate, the overtime rate per hour being arrived at by the method outlined in the agreement itself, which is in evidence.

Column D is the amount of money paid by the carriers to each employee in the overtime checks plus a small amount, in some instances only a few cents, of overtime work in excess of the 12 hours. Those few cents are shown in Column E of the exhibit.

Column F is the overtime paid by the carriers to the employees less the few cents that were paid for overtime work in excess of the 12 hours.

Mr. SHARP: May I, with permission of counsel, make a short explanation of what those few cents amount to? A man working on a 12-hour watch may have worked, as a matter of fact, 13 hours on a particular [250] day. There is no controversy between the parties that that thirteenth hour is overtime, that has been paid for, and that is the few cents involved. All that will be involved here is whether there has been proper payment between the eight hours and twelve hours, but not in excess of 12 hours, and the few cents that are involved in these exhibits, I think, are overtime in excess of 12 hours. I think you so label them in your explanation.

(Testimony of Clyde W. Deal.)

Mr. BOOTH: I think the witness will frame it this way, if you will let me state it, the ten dollar increase in wages does not enter into this case at all. That has been paid for in full.

Mr. SHARP: That is correct.

Mr. BOOTH: Retroactive under the stipulation. And where a 12-hour man during those four months' period worked in excess of 12 hours, he has been paid that excess over 12 hours. So there is no overtime over 12 hours involved, and it is just as counsel stated, that the only question involved in this case is whether these men are entitled to have pay for overtime in excess of eight hours worked on each of those watches. Is that correct?

THE WITNESS: That is correct.

Mr. SHARP: These small amounts, 40 and 90 cents, is the overtime in excess of 12 hours. In order to make the amount come out even you have to add or subtract as the case may be. Q. What is column G? A. Column G is the amount due, now due, each man, arrived at by subtracting column F from column C. In other words, column C is the total amount of overtime due, in the manner arrived at by this computation, and column G represents the balance due after subtracting the check received.

Mr. SHARP: I ask that this go in as plaintiff's Exhibit No. 10. I offer it in evidence.

The COURT: Admitted. (The document was marked plaintiff's Exhibit No. 10). Said

EXHIBIT NO. 10.

is in words and figures as follows: [251]

(Testimony of Clyde W. Deal.)

EXHIBIT NO. 10

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

LIST OF MARINE FIREMEN MAKING ASSIGNMENTS OF WAGE BALANCES DUE THEM AS OVERTIME, FOR PERIOD MAR. 1 to AUG. 31, 1928

	Names	Column A Total 12 hr. watches ac per Exhibit C, S. P. answer	Column B Total overtime due at 4 hours per watch	Column C Total amount overtime compensation due at .7014 per hour (Being Column B times the hourly rate)	Column D 9/30/28 check from Exhibit C	Column E Amount included in 9/30/28 check for time in excess of 12 hrs. per watch (from Column 12, S. P. Exhibit C)	Column F Amount included in 9/30/28 check for time in excess of 8 hrs. but not more than 12 hrs. (being Column D minus E)	Column G Additional overtime due men without interest (being Column C minus F)
1	Anderson, Carl J.	122	488	$342.28	$155.97	$ .30	$155.67	$186.61
2	Anderson, Conrad	96	384	269.34	119.14	.40	118.74	150.60
3	Braumiller, Emil	113	452	317.03	137.97	.90	137.07	179.96
4	Brennan, J. J.	119	476	333.87	145.50	.10	145.40	188.47
5	Bunatsos, Tom	122	488	342.28	156.51	.50	156.01	186.27
6	Catcher, M. R.	88	352	246.89	111.63	.30	111.33	135.56
7	Chalmers, Alex	109	436	305.81	137.40	.20	137.20	168.61
8	Costa, A. L.	123	492	345.09	157.11	——	157.11	187.98
9	Crandall, Horace L.	121	484	339.48	154.62	.30	154.32	185.16
10	Cummins, Tom	115	460	322.64	145.54	——	145.54	177.10
11	Curtis, Gilbert E.	118	472	331.06	150.58	——	150.58	180.48

(Testimony of Clyde W. Deal.)

		Column A	Column B	Column C	Column D	Column E	Column F	Column G
12	Daniloff, Nicholas	110	440	308.62	138.99	—	138.99	169.63
13	Davidson, George	123	492	345.09	157.11	—	157.11	187.98
14	Dineen, Michael	122	488	342.28	155.77	.40	155.37	186.91
15	Dion, David	101	404	283.37	127.23	.90	126.33	157.04
16	Domingoes, Joseph R.					—		
17	Dunn, James N.	105	420	294.59	138.37	—	138.37	156.22
18	Edwards, Zene M.	124	496	347.89	149.90	.10	149.80	198.09
19	Eide, Hans	117	468	328.26	143.20	—	143.20	185.06
20	Enos, John					—		
21	Esteller, Joaquin	123	492	345.09	158.51	.30	158.21	186.88
22	Fernandes, Roger	122	488	342.28	148.71	—	148.71	193.57
23	Fernandez, Y.	123	492	345.09	157.40	.30	157.10	187.99
24	Fitzgerald, M. J.	123	492	345.09	157.11	—	157.11	187.98
25	Foss, Reidar	121	484	339.48	147.60	—	147.60	191.88
								[252]
26	Gallagher, Cornelius	116	464	$325.45	$149.42	—	$149.42	$176.03
27	Gardner, Robert E.	123	492	345.09	157.21	.10	157.11	187.98
28	Gluck, Sam	121	484	339.48	154.52	.30	154.22	185.26
29	Gonzales, Raymond	117	468	328.26	143.19	.10	143.09	185.17
30	Hagberg, N. A.	50	200	140.28	63.46	.50	62.96	77.32
31	Hanson, N. O.	121	484	339.48	154.52	.30	154.22	185.26
32	Harner, Hoyt I.	89	356	249.70	115.57	—	115.57	134.13

(Testimony of Clyde W. Deal.)

		Column A	Column B	Column C	Column D	Column E	Column F	Column G
33	Hartley, Arthur C.	122	488	342.28	156.01	—	156.01	186.27
34	Hayden, John J.	112	448	314.23	141.19	—	141.19	173.04
35	Heineman, Fred S.	119	476	333.87	145.26	.20	145.06	188.81
36	Holland, Michael	112	448	314.23	138.20	.50	137.70	176.53
37	Hooper, Robert L.	63	252	176.75	82.11	—	82.11	94.64
38	Hope, Finn	121	484	339.48	153.99	.10	153.89	185.59
39	Hosier, Leon	106	424	297.39	127.93	.20	127.73	169.66
40	Ives (Ivie), Claude L.	102	408	286.17	130.46	1.31	129.15	157.02
41	Johanson, Adolph	123	492	345.09	152.58	—	152.58	192.51
42	Karsten, Hubert	109	436	305.81	141.73	—	141.73	164.08
43	Kennedy, Louis J.	34	136	95.39	38.42	—	38.42	56.97
44	Kennedy, Samuel	91	364	255.31	116.08	1.10	114.98	140.33
45	Klemmick, Alfred H.	—				—		
46	Knobelaugh, A. K.	120	480	336.67	145.81	—	145.81	190.86
47	Lally, John	123	492	345.09	157.11	—	157.11	187.98
48	Leimar, Louis J.	81	324	227.25	99.17	.40	98.77	128.48
49	Leland, Earl	121	484	339.48	147.26	—	147.26	192.22
50	Linehan, James L.	104	416	291.78	122.67	—	122.67	169.11
51	Linhares, Joseph	122	488	342.28	154.91	—	154.91	187.37
52	Lopes, John P.	123	492	345.09	157.11	—	157.11	187.98
53	Lyons, Joseph E.	71	284	199.20	84.63	—	84.63	114.57

(Testimony of Clyde W. Deal.)

		Column A	Column B	Column C	Column D	Column E	Column F	Column G
54	Malcomson, John	46	184	129.06	64.26	1.40	62.86	66.20
55	Mardis, Louis	114	456	319.84	146.63	.20	146.43	173.41
56	McGue, James	42	168	117.84	53.47	——	53.47	64.37
57	McIntyre, A. B.	117	468	328.26	148.54	.10	148.44	179.82
58	Murray, Robert E.	95	380	266.53	121.23	.80	120.43	146.10
59	Nissen, James A.	112	448	314.23	135.82	.20	135.62	178.61
60	Noaks, George	120	480	336.67	146.70	.30	146.40	190.27
								[253]
61	Olson, Nils	——				——		
62	Oyaczo, Edwin M.	105	420	$294.59	$131.87	.10	$131.77	$162.82
63	Perry, Manual	4	16	11.22	5.79	——	5.79	5.43
64	Phillips, Eugene T.	51	204	143.09	64.26	1.00	63.26	79.83
65	Price, Fred	——						
66	Price, Lloyd	122	488	342.28	154.02	——	154.02	188.26
67	Pritchard, Charles	101	404	283.37	118.41	.10	118.31	165.06
68	Rahill, Walter	118	472	331.06	152.11	.50	151.61	179.45
69	Ransom, R. B.	99	396	277.75	121.69	.70	120.99	156.76
70	Rico, E.	123	492	345.09	153.63	.10	153.53	191.56
71	Roberts, Hubert A.	89	356	249.70	119.83	.90	118.93	130.77
72	Rowland, Lusky	27	108	75.75	35.60	——	35.60	40.15
73	Sancken, Louis	105	420	294.59	130.57	1.00	129.57	165.02

(Testimony of Clyde W. Deal.)

		Column A	Column B	Column C	Column D	Column E	Column F	Column G
74	Scholl, Joseph A.	112	448	314.23	138.36	.30	138.06	176.17
75	Sliscovich, John J.	118	472	331.06	145.05	——	145.05	186.01
76	Stanford, S. B.	118	472	331.06	143.02	.10	142.92	188.14
77	Stern, Frank	9	36	25.25	12.68	——	12.68	12.57
78	Tinker, L. C.	83	332	232.86	105.93	.10	105.83	127.03
79	Van Avsdall, L. W.	121	484	339.48	154.87	.30	154.57	184.91
80	Wall, Phillip	44	176	123.45	62.64	——	62.64	60.81
81	Wemmer, Edwin	117	468	328.26	150.12	.30	149.82	178.44
82	Wendelbo, Fred M.	123	492	345.09	157.32	.20	157.12	187.97
83	White, Henry F.	102	408	286.17	127.07	——	127.07	159.10
84	Wilkinson, George	121	484	339.48	154.97	.40	154.57	184.91
85	Wolslegal, Erwin	92	368	258.12	116.43	——	116.43	141.69
	TOTALS	8,226	32,904	$23,078.91	$10,355.28	$19.21	$10,336.07	$12,742.84

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(Testimony of Clyde W. Deal.)

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)
LIST OF DECK HANDS MAKING ASSIGNMENTS OF WAGE BALANCES DUE THEM AS OVERTIME, FOR PERIOD MAR. 1 to AUG. 31, 1928

	Names	Column A Total 12 hr. watches as per Exhibit C, S. P. answer	Column B Total overtime due at 4 hours per watch	Column C Total amount overtime compensation due at .6684 per hour	Column D 9/30/28 check from Exhibit C	Column E Amount included in 9/30/28 check for time in excess of 12 hrs. per watch (from Column 12 S. P. Exhibit C)	Column F Amount included in 9/30/28 check for time in excess of 8 hrs. but not more than 12 hrs. (being Column 2 minus 12)	Column G Additional overtime due men without interest (being Column C minus F)
86	Akinoff, Viachaslow	123	492	$328.71	$149.61	——	$149.61	$179.10
87	Algraya, Peter	60	240	160.34	76.60	$ .85	75.75	84.59
88	Alyes, Edwin V.	122	488	326.03	148.86	.29	148.57	177.46
89	Anderson, C. E.	121	484	323.36	140.57	——	140.57	182.79
90	Anderson, Carl I.	122	488	326.03	148.23	——	148.23	177.80
91	Anderson, Floyd L.	57	228	152.33	64.30	——	64.30	88.03
92	Avelar, Antonio	123	492	328.71	149.61	——	149.61	179.10
93	Avelino, Walter	41	164	109.57	51.78	1.24	50.54	59.03
94	Babb, Dempsey E.	122	488	326.03	149.48	1.24	148.24	177.79
95	Ballard, Cecil J.	37	148	98.88	45.54	.19	45.35	53.53
96	Banks, Frank J.	116	464	310.00	135.81	.48	135.33	174.67
97	Barrett, Edward B.	121	484	323. 36	147.72	.85	146.87	176.49

(Testimony of Clyde W. Deal.)

		Column A	Column B	Column C	Column D	Column E	Column F	Column G
98	Barton, Emery V.	94	376	251.21	118.60	——	118.60	132.61
99	Batchelder, James	123	492	328.71	149.61	——	149.61	179.10
100	Batchelder, Lawrence	123	492	328.71	149.61	——	149.61	179.10
101	Bennett, Ernest C.	108	432	288.62	126.96	——	126.96	161.66
102	Benson, Albert R.	——	——	——	——	——	——	——
103	Berger, Adolph F.	121	484	323.36	148.14	.95	147.19	176.17
104	Bertao, John	48	192	128.28	60.84	——	60.84	67.44
105	Bertolani, Sebastiano	122	488	326.03	141.60	——	141.60	184.43
106	Bettencourt, Carmel	107	428	285.95	128.04	.48	127.56	158.39
107	Bird, Herbert	122	488	326.03	141.60	——	141.60	184.43
108	Borges, George C.	104	416	277.93	120.73	.19	120.54	157.39
109	Botzer, Max F.	123	492	328.71	147.29	——	147.29	181.42
110	Bradley, James	78	312	208.45	95.22	——	95.22	113.23
								[255]
111	Bradley, Joseph	123	492	$328.71.	$328.61	$——	$149.61	$179.10
112	Braga, J. R.	123	492	328.71	149.61	——	149.61	179.10
113	Branz, Joseph	114	456	304.65	137.26	.29	136.97	167.68
114	Brickey, John A.	123	492	328.71	149.61	——	149.61	179.10
115	Brosnan, Dennis	123	492	328.71	149.61	.10	149.51	179.20
116	Bruce, Charles L.	123	492	328.71	149.61	——	149.61	179.10
117	Burgstrom, Albert C.	118	472	315.34	138.18	.10	138.08	177.26

(Testimony of Clyde W. Deal.)

		Column A	Column B	Column C	Column D	Column E	Column F	Column G
118	Cannistra, Antonio	123	492	328.71	149.61	—	149.61	179.10
119	Capello, John F.	120	480	320.69	146.35	.85	145.50	175.19
120	Castro, Antone	120	480	320.69	139.18	—	139.18	181.51
121	Cepo, Joseph	122	488	326.03	148.33	.10	148.23	177.80
122	Coelho, Manuel	123	492	328.71	149.61	—	149.61	179.10
123	Collose, Angelo	123	492	328.71	149.61	—	149.61	179.10
124	Conroy, Thomas J.	123	492	328.71	149.61	—	149.61	179.10
125	Corriea, John R.	64	256	171.03	74.93	—	74.93	96.10
126	Corriea, Raymond A.	119	476	318.02	138.94	.48	138.46	179.56
127	Corriea, Raymond C.	116	464	310.00	137.32	—	137.32	172.68
128	Corvello, Alfred	120	480	320.69	139.18	—	139.18	181.51
129	Corry, Edward	86	344	229.83	103.93	—	103.93	125.90
130	Castanho, John	—				—		
131	Dalke, Charles	114	456	304.65	140.01	.48	139.53	165.12
132	Dalke, Jake	46	184	122.93	58.78	.67	58.11	64.82
133	Danberg, Karl F.	122	488	326.03	148.23	—	148.23	177.80
134	Delmore, James A.	122	488	326.03	141.79	.19	141.60	184.43
135	Dewerd, Adrain J.	94	376	251.21	114.72	.10	114.62	136.59
136	Dias, C. J.	123	492	328.71	149.61	—	149.61	179.10
137	Durkee, Ralph A.	122	488	326.03	143.98	—	143.98	182.05
138	Eastman, Gus	112	448	299.31	135.45	—	135.45	163.86

(Testimony of Clyde W. Deal.)

		Column A	Column B	Column C	Column D	Column E	Column F	Column G
139	Edgerton, Clark	121	484	323.36	147.43	.59	146.84	176.52
140	Edwards, Bert E.	44	176	117.59	53.40	.39	53.01	64.58
141	Ervin, Henry A.	24	96	64.14	27.44	—	27.44	36.70
142	Evenson, John	36	144	96.21	43.34	.67	42.67	53.54
143	Everett, Charles	118	472	315.34	143.58	.19	143.39	171.95
144	Fernandez, Julius	121	484	323.36	148.02	.49	147.53	175.83
145	Fernandez, V. A.	—				—		
146	Ferriera, Jesse K.	122	488	326.03	141.60	—	141.60	184.43
147	Foley, Martin	121	484	323.36	147.24	.49	146.75	176.61
148	Foster, Charles	123	492	328.71	149.90	.29	149.61	179.10
149	Freitas, John	123	492	328.71	150.09	.48	149.61	179.10
150	Freitas, John C.	123	492	328.71	149.61	—	149.61	179.10
								[256]
151	Freitas, Thomas	121	484	$323.36	$147.24	$ .39	$146.85	$176.51
152	Freibe, Erwin	123	492	328.71	149.61	—	149.61	179.10
153	Freidericks, Gus	123	492	328.71	149.61	—	149.61	179.10
154	George, Peter L.	123	492	328.71	149.80	.19	149.61	179.10
155	Goncalves, Jos. F.	57	228	152.33	71.92	—	71.92	60.41
156	Goosch, Emil E.	119	476	318.02	145.43	—	145.43	172.59
157	Green, Charles	65	260	173.71	76.65	—	76.65	97.06
158	Green, George	120	480	320.69	138.84	—	138.84	181.85
159	Griffin, Edwin	10	40	26.72	13.36	—	13.36	13.36

(Testimony of Clyde W. Deal.)

		Column A	Column B	Column C	Column D	Column E	Column F	Column G
160	Gruzdeff, J. E.	103	412	275.26	123.40	.38	123.02	152.24
161	Gunderson, Trygve	45	180	120.26	49.42	——	49.42	70.84
162	Hall, James T.	120	480	320.69	139.18	——	159.18	181.51
163	Hand, Edward	112	448	299.31	131.14	——	131.14	168.17
164	Hansen, Chris M.	89	356	237.84	102.75	——	102.75	135.09
165	Hansen, Hans K. K.	121	484	323.36	143.21	——	143.21	180.15
166	Hansen, Hans P.	121	484	323.36	134.16	.58	133.58	189.78
167	Hansen, Victor	109	436	291.29	127.53	.20	127.33	163.96
168	Harper, Jos. L.	18	72	48.10	20.50	——	20.50	27.60
169	Hendricks, Henry (Harvey)	113	452	301.98	135.83	——	135.83	166.15
170	Henriques, Francisco	123	492	328.71	149.61	——	149.61	179.10
171	Hitchcock, Henry	114	456	304.65	140.19	——	140.19	164.46
172	Horasek, Joseph	123	492	328.71	150.19	.59	149.60	179.11
173	Hughes, Albert G.	——				——		
174	Ignacio, Manual F.	123	492	328.71	149.61	——	149.61	179.10
175	Iverson, Harold	122	488	326.03	148.23	——	148.23	177.80
176	Iverson, Johan I.	57	228	152.33	72.58	——	72.58	79.75
177	Jerome, Manuel	121	484	323.36	147.52	——	147.52	175.84
173	Joaquin, Manual	122	488	326.03	148.52	.29	148.23	177.80
179	Jogoloff, Peter	117	468	312.67	143.63	.29	143.34	169.33
180	Johanson, Hans T.	123	492	328.71	149.61	——	149.61	179.10

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(Testimony of Clyde W. Deal.)

		Column A	Column B	Column C	Column D	Column E	Column F	Column G
181	Johnson, E.	43	172	$114.91	$ 45.99	$——	$ 45.99	$ 68.92
182	Johnson, Halvor	123	492	328.71	149.61	——	149.61	179.10
183	Jones, Albert H.	60	240	160.34	73.45	——	73.45	86.89
184	Kayser, George H.	122	488	326.03	141.60	——	141.60	184.43
185	Keintz, Arch F.	119	476	318.02	144.77	——	144.77	173.25
186	King, Ferdinand G.	59	236	157.67	68.39	——	68.39	89.28
187	King, Vaughn M.	122	488	326.03	141.60	——	141.60	184.43
188	Knutson, John F.	95	380	253.88	104.68	.29	104.39	149.49
189	Kristensen, John M.	120	480	320.69	139.71	.20	139.51	181.18
190	Kritsky, Dimetry D.	123	492	328.71	149.90	.22	149.68	179.03
191	Laine, Andrew	123	492	328.71	149.61	——	149.61	179.10
192	Lally, Martin F.	52	208	138.96	61.38	——	61.38	77.58
193	Lamoreaux, Eugene	91	364	243.19	105.51	——	105.51	137.68
194	Larsen, John	123	492	328.71	149.61	——	149.61	179.10
195	Lerch, Adalbert R.	58	232	155.00	70.97	——	70.97	84.03
196	Levchenko, Theo.	114	456	304.65	130.58	——	130.58	174.07
197	Levine, Esser	85	340	227.15	101.18	.29	100.89	126.26
198	Lomba, Charles Q.	123	492	328.71	149.61	——	149.61	179.10
199	Lomba, John Q.	122	488	326.03	141.60	——	141.60	184.43
200	Lombard, Henry C.	109	436	291.29	123.68	——	123.68	167.61
201	Lopes, John P.	——				——		
202	Luebeke, Elmer	67	268	179.05	82.82	.10	82.72	96.33

(Testimony of Clyde W. Deal.)

		Column A	Column B	Column C	Column D	Column E	Column F	Column G
203	Lukas, Joe	120	480	320.69	139.81	.30	139.51	181.18
204	Marks, Joseph R.	82	328	219.14	106.45	1.71	104.74	114.40
205	Marshall, J. J.	122	488	326.03	148.52	.29	148.23	177.80
206	Martin, John	121	484	323.36	148.11	.59	147.52	175.84
207	Mason, Sydney B.	75	300	200.43	90.22	—	90.22	110.21
208	Massey, Cornelius	100	400	267.24	125.55	—	125.55	141.69
209	Mathias, Joseph M.	121	484	323.36	140.66	.10	140.56	182.80
210	Mathiesen, Antone	123	492	328.71	149.61	—	149.61	179.10
								[258]
211	McCarten, Charles	116	464	$310.00	$135.32	$—	$135.32	$174.68
212	McCarthy, Michael	122	488	326.03	141.60	—	141.60	184.43
213	McNamara, John E.	—				—		
214	Messer, Allen R.	123	492	328.71	150.39	.77	149.62	179.09
215	Meyer, John C.	110	440	293.96	136.37	.69	135.68	158.28
216	Miller, Antone F.	99	396	264.57	116.54	—	116.54	148.03
217	Moniz, Antone P.	115	460	307.33	131.95	—	131.95	175.38
218	Moniz, Antonio	122	488	326.03	141.60	—	141.60	184.43
219	Moniz, Joe	—				—		
220	Morris, Charles C.	122	488	326.03	141.60	—	141.60	184.43
221	Morrison, Roscoe	67	268	179.05	80.69	.95	79.74	99.31
222	Moyer, John	99	396	264.57	124.50	—	124.50	140.07

(Testimony of Clyde W. Deal.)

		Column A	Column B	Column C	Column D	Column E	Column F	Column G
223	Murphy, Peter B.	123	492	328.71	149.61	—	149.61	178.10
224	Nadjaf, Aslon	65	260	173.71	79.97	—	79.97	93.74
225	Naro, Joseph	97	388	259.22	112.17	.38	111.79	147.43
226	Nelson, Victor E.	122	488	326.03	141.61	—	141.61	184.42
227	Nielsen, Harold E.	121	484	323.36	140.22	—	140.22	183.14
228	Nillson, Martin	89	356	237.84	102.75	—	102.75	135.09
229	Noonan, William	117	468	312.67	149.35	.38	148.97	163.70
230	Oldham, Albert E.	43	172	114.91	55.50	.85	54.65	60.26
231	Ollino, Carlo	—				—		
232	Olsen, Arthur A.	89	356	237.84	106.81	.38	106.43	131.41
233	Olsen, Harold A.	123	492	328.71	149.71	.10	149.61	179.10
234	Olsen, Sverre K.	123	492	328.71	149.61	—	149.61	179.10
235	Olson, Erick G.	119	476	318.02	145.43	—	145.43	172.59
236	Olson, Ole	123	492	328.71	149.61	—	149.61	179.10
237	O'Neill, Michael	111	444	296.64	126.44	—	126.44	170.20
238	Oupe, Paul	29	116	77.50	35.48	.76	34.72	42.78
239	Park, Henry T.	123	492	328.71	149.61	—	149.61	179.10
240	Parke, William L.	119	476	318.02	144.87	.10	144.77	173.25
241	Paulino, Manuel	9	36	24.05	12.07	—	12.07	11.98
242	Paulson, W. B.	—				—		
243	Penney, Lester E.	30	120	80.17	33.26	.85	32.41	47.76
244	Perry, A. A.	121	484	323.36	140.22	—	140.22	183.14

(Testimony of Clyde W. Deal.)

		Column A	Column B	Column C	Column D	Column E	Column F	Column G
245	Perry, Frank J.	32	128	85.52	44.09	—	44.09	41.43
246	Perry, Manuel	119	476	318.02	138.46	—	138.46	179.56
247	Perry, Ray J.	76	304	203.10	93.46	—	93.46	109.64
248	Pimental, Joseph	123	492	328.71	149.80	.19	149.61	179.10
249	Popoff, Nicholas	122	488	326.03	141.60	—	141.60	184.43
250	Pulrar, Joseph	120	480	320.69	145.67	.57	145.10	175.59
								[259]
251	Quirk, George	123	492	$328.71	$149.71	$ .10	$149.61	$179.10
252	Raynor, Robert G.	97	388	259.22	120.75	—	120.75	138.47
253	Reilly, Francis J.	13	52	34.74	17.92	—	17.92	16.82
254	Ritchie, George	109	436	291.29	133.25	.29	132.96	158.33
255	Rogers, Manuel G.	1	4	2.67	1.05	—	1.05	1.62
256	Rose, Jesse E.	119	476	318.02	138.46	—	138.46	179.56
257	Rontery, Harold E.	45	180	120.26	50.95	—	50.95	69.31
258	Rubanow, K. (Roobanoff)	120	480	320.69	139.51	—	139.51	118.18
259	Samuelson, John	123	492	328.71	149.61	—	149.61	179.10
260	Santos, K. R.	90	360	240.52	109.11	—	109.11	131.41
261	Sargent, Sydney	112	448	299.31	135.11	—	135.11	164.20
262	Schur, John K.	114	456	304.65	137.20	—	137.20	167.45

(Testimony of Clyde W. Deal.)

		Column A	Column B	Column C	Column D	Column E	Column F	Column G
263	Seitz, Max A.	123	492	328.71	149.61	——	149.61	179.10
264	Sersa, Frank	115	460	307.33	134.28	——	134.28	173.05
265	Sevan, Alton	122	488	326.03	143.59	——	143.59	182.44
266	Sherrill, H. D.	46	184	122.93	57.10	——	57.10	65.83
267	Sherrill, Worth C.	64	256	171.03	78.92	——	78.92	92.11
268	Simpson, Frank	96	384	256.55	113.59	.19	113.40	143.15
269	Smetanin, Alexander	113	452	301.98	133.13	.19	132.94	169.04
270	Smetanin, Victor	113	452	301.98	138.96	.48	138.48	163.50
271	Smith, Edward	97	388	259.22	112.78	——	112.78	146.44
272	Smith, James J.	114	456	304.65	137.21	——	137.21	167.44
273	Smith, Leo	12	48	32.07	12.94	.38	12.56	19.61
274	Solton, Manuel G.	——				——		
275	Souza, Antone F.	116	464	310.00	139.96	——	139.96	170.04
276	Souza, Antone P.	123	492	328.71	149.71	.10	149.61	179.10
277	Souza, John M.	122	488	326.03	141.60	——	141.60	184.43
278	Strangeland, Jacob	122	488	326.03	141.27	——	141.27	184.76
279	Stevenson, V. J.	72	288	192.41	85.96	——	85.96	106.45
280	Stillings, Eugene	121	484	323.36	147.52	——	147.52	175.84
								[260]
281	Swanson, Arthur	——	——	$ ——	$ ——	$ ——	$ ——	$ ——
282	Swanson, Harry	——	——	——	——	——	——	——

(Testimony of Clyde W. Deal.)

		Column A	Column B	Column C	Column D	Column E	Column F	Column G
283	Quirero, H.	121	484	$323.36	$147.19	——	147.19	176.17
284	Thechares, N.	123	492	328.71	149.61	——	149.61	179.10
285	Thompson, Fay	43	172	114.91	51.97	——	51.97	62.94
286	Thomassen, Thomas G.	122	488	326.03	148.23	——	148.23	177.80
287	Tomkinson, Ernest	122	488	326.03	141.70	.10	141.60	184.43
288	Trigvero, Antone	123	492	328.71	149.61	——	149.61	179.10
289	Trigvero, M. F.	115	460	307.33	131.95	——	131.95	175.38
290	Ushanoff, Basil	122	488	326.03	148.57	——	148.57	177.46
291	Valladso, A. A.	100	400	267.24	118.58	——	118.58	148.66
292	Vargas, John R.	123	492	328.71	149.61	——	149.61	179.10
293	Vlasich, L.	——				——		
294	Ward, Fred	100	400	267.24	118.06	.19	117.87	149.37
295	Weaver, William	43	172	114.91	57.62	——	57.62	57.29
296	Wilkman, Charles	123	492	328.71	149.61	——	149.61	179.10
297	Williams, William	71	284	189.74	86.11	.20	85.91	103.83
298	Wilson, Dudley	111	444	296.64	135.07	——	135.07	161.57
299	Young, Peter	40	160	106.90	41.77	——	41.77	65.13
300	Zachary, Alex	120	480	320.69	146.14	——	146.14	174.55
301	Zundina, Chas. W.	123	492	328.71	149.61	——	149.61	179.10
	TOTALS	20,634	82,336	$55,142.49	$24,754.82	$29.90	$24,724.92	$30,417.57

[261]

(Testimony of Clyde W. Deal.)

NORTHWESTERN PACIFIC RAILROAD COMPANY

LIST OF MARINE EMPLOYEES MAKING ASSIGNMENTS OF WAGE BALANCES DUE THEM AS OVERTIME, FOR PERIOD MAR. 1 to AUG. 31, 1928

	Names		Column A Total 12 hr. watches as per Exhibit C, N. W. P. answer	Column B Total overtime due at 4 hours per watch	Column C Total amount overtime compensation due at .6684 per hour	Column D 9/30/28 check from Exhibit C	Column E Amount included in 9/30/28 check for time in excess of 12 hrs. per watch (from Column 12 N. W. P. Exhibit C)	Column F Amount included in 9/30/28 check for time in excess of 8 hrs. but not more than 12 hrs. (being Column 2 minus 12)	Column G Additional overtime due men without interest (being Column C minus F)
1	Adamson, G. D.	(d)	112	448	$299.31	126.55	$——	126.55	172.76
2	Cordoza, M.	(d)	109	436	291.29	130.00	——	130.00	161.29
3	Collins, M. J.	(d)	123	492	328.71	148.87	.04	148.83	179.88
4	Connor, Geo. M.	(d)	26	104	69.48	29.61	.35	29.26	40.22
5	Detele, Syd. A.	(d)	120	480	320.69	140.54	——	140.54	180.15
6	Englund, Nels E.	(d)	123	492	328.71	148.87	.04	148.83	179.88
7	Helgasson	(d)	122	488	326.03	140.82	——	140.82	185.21
8	Hokanson, F.	(d)	123	492	328.71	148.83	——	148.83	179.88
9	Hunt, W. U. (Urcharko, W.)	(d)	116	464	310.00	133.11	——	133.11	176.89
10	Joaquin, M.	(d)	122	488	326.03	140.82	——	140.82	185.21
11	Johnson, Alf.	(d)	114	456	304.65	135.70	——	135.70	168.95
12	Knudson, S.	(d)	118	472	315.34	133.77	.38	133.39	181.95
13	Lindekrans, Fred	(d)	123	492	328.71	148.83	——	148.83	179.88

(Testimony of Clyde W. Deal.)

			Column A	Column B	Column C	Column D	Column E	Column F	Column G
14	Mattos, A.	(d)	88	352	235.17	101.19	——	101.19	133.98
15	Mowrey, O. R.	(d)	121	484	323.36	141.72	.04	141.68	181.68
16	Nealon, I.	(d)	118	472	315.34	147.17	.04	147.13	168.21
17	Nelson, Emil	(d)	121	484	323.36	148.55	——	148.55	174.81
18	Stone, A. J. (Oushanoff, A.)	(d)	120	480	320.69	144.54	——	144.54	176.15
19	Stamatoff, N.	(d)	116	464	310.00	124.89	.65	124.24	185.76
20	Taylor, Pete	(d)	64	256	171.03	77.83	——	77.83	93.20
									[262]
21	Weimann, Geo.	(d)	116	464	$310.00	$143.02	$1.04	$141.98	$168.02
22	Olivera, S. N.	(d)	121	484	323.36	136.81	——	136.81	186.55
23	Creighton, W. J. Jr.	(f)	109	436	305.81	131.86	——	131.86	173.95
24	Herulizi, Wm.	(f)	74	296	207.61	88.85	.05	88.80	118.81
25	Hoag, Leonard	(f)	97	388	272.14	114.35	——	114.35	157.79
26	Jacoli, Otto	(f)	110	440	308.62	138.22	——	138.22	170.40
27	Jukich, F. Jr.	(f)	110	440	308.62	139.44	1.22	138.22	170.40
28	Lucas, Alfred	(f)	——	——	——	——	——	——	——
29	Shine, Thomas	(f)	105	420	294.59	121.13	1.08	120.05	174.54
30	Taylor, N. D.	(f)	122	488	342.28	148.52	——	148.52	193.76
31	Hallett, A. F.	(w)	129	516	297.99	117.59	——	117.59	180.40
32	Jones, N. L.	(cw)	119	476	318.02	129.66	——	129.66	188.36
	TOTALS		3,411	13,644	$9,165.65	$4,001.66	$4.93	$3,996.73	$5,168.92

[263]

(Testimony of Clyde W. Deal.)

The witness continued: In the exhibits the first group is only Southern Pacific, the smaller exhibits cover the Northwestern Pacific employees. The first set is as to the firemen, the second as to deck hands. All were prepared in the same way. The names are all listed to correspond with the listing in the carrier's exhibits. After the checks were paid to the men on account of the judgment of September 1928, demand was made on the defendants for the extra compensation claimed by the men. At first the demand was made orally and was followed up very shortly after in writing by a letter dated January 9, 1929, to which replies were received from the Southern Pacific Company under date of January 17, 1929, and on behalf of the Northwestern Pacific Railroad Company under date of January 22, 1929. These letters were served on behalf of the Ferryboatmen's Union and made demands, calling the attention of the carriers to their failure to pay the proper amounts to the men.

These letters and answers were duly offered and admitted in evidence as

PLAINTIFF'S EXHIBIT NO. 11.

Said Exhibit No. 11 is in words and figures as follows:

(Testimony of Clyde W. Deal.)

"Registered, return receipt requested.

Derby, Sharp, Quinby & Tweedt
1000 Merchants Exchange Bldg.
San Francisco, California

January 9, 1929

Southern Pacific Company,
65 Market Street
San Francisco, California
Attention: Messrs. Burckhalter and Hancock.
Gentlemen:

It has been called to our attention by the Ferryboatmen's Union of California that apparently you have not fully complied with the judgment rendered by the United States District Court on September 29, 1928, in the case of the Atchison, Topeka & Santa Fe Railway et al vs. The Ferryboatmen's Union of California.

We call your attention to the following [264] provisions of said judgment:

'The rule pertaining to hours of service * * * shall become effective as and from March 1, 1928, and as and from said date * * * said carriers and each of them shall observe and put into effect said Rule 6, reading as follows:

* * * *

(Testimony of Clyde W. Deal.)

Assigned crews will work on the basis of eight (8) hours or less on watch each day for six (6) consecutive days.

Exceptions:

* * * *

(3) Where three crews are used, watches may be as long as eight (8) hours and forty (40) minutes, provided the combined watches do not exceed twenty-four (24) hours and no crew works over forty-eight (48) hours in six (6) consecutive days.

(4) Where two crews are used, watches may be as long as eight (8) hours and forty (40) minutes, provided the combined watches do not exceed sixteen (16) hours and no crew works over forty-eight (48) hours in six (6) consecutive days.'

We are informed that you have not paid the back pay due for March 1. 1928 in full.

You will recall that notwithstanding the Arbitration Award required you to put in the eight-hour day as of November 1, 1927. you refused to observe the award, but on the contrary took an appeal therefrom and during the appeal did not put the eight-hour day into effect. While the appeal was pending, by stipulation between us, which was incorporated in the judgment, it was agreed that if the order of the court was affirmed, the Award, so far as

(Testimony of Clyde W. Deal.)

hours were concerned, would be effective as of March 1, 1928, instead of November 1, 1927. Upon the appeal being affirmed, the rule as to hours was effective as of March 1, 1928.

In all cases, therefore, where on and after March 1, 1928, you employed men on a 12-hour basis you became liable, in accordance with our stipulation and the judgment of the court, for overtime for the four hours each day that the men worked over eight hours.

This, therefore, is to make formal demand upon you to comply with said judgment and the agreements between the parties with respect to the matters discussed and if the same be not complied with on or before the 20th day of January, 1929, we shall bring contempt proceedings and such other proceedings as may be open to us, to compel you to observe the judgment of the court and the working agreements between the parties.

Very truly,

Derby, Sharp, Quinby & Tweedt

JCS:AM

c. c. to Mr. Booth" [265]

(Testimony of Clyde W. Deal.)

"Return Receipt Requested

Derby, Sharp, Quinby, Tweedt
1000 Merchants Exchange
San Francisco, California

January 9, 1929

Northwestern Pacific Railroad Company
65 Market Street
San Francisco, California
Attention: Messrs. Maggard, Small and Fennema

Gentlemen:

It has been called to our attention by the Ferryboatmen's Union of California that apparently you are violating the judgment rendered by the United States District Court on September 28, 1928, in the case of the Atchison, Topeka & Santa Fe Railway et al.

We call your attention to the following provisions of said judgment:

On page 6, line 9, the court orders you to observe the following rule:

'The rule pertaining to hours of service * * * shall become effective as and from March 1, 1928, and as and from said date * * * said carriers and each of them shall observe and put into effect said Rule 6, reading as follows:

* * * * * *

(Testimony of Clyde W. Deal.)

Assigned crews will work on the basis of eight (8) hours or less on watch each day for six (6) consecutive days.

Exceptions:

* * * *

(3) Where three crews are used, watches may be as long as eight (8) hours and forty (40) minutes, provided the combined watches do not exceed twenty-four (24) hours and no crew works over forty-eight (48) hours in six (6) consecutive days.

(4) Where two crews are used, watches may be as long as eight (8) hours and forty (40) minutes, provided the combined watches do not exceed sixteen (16) hours and no crew works over forty-eight (48) hours in six (6) consecutive days.'

We are informed that you have not paid the back pay due for March 1, 1928, in full.

You will recall that notwithstanding the Arbitration Award required you to put in the 8-hour day [266] as of November 1, 1927, you refused to observe the award, but on the contrary took an appeal therefrom and during the appeal did not put the 8-hour day into effect. While the appeal was pending, by stipulation between us, which is incorporated in the judgment, it was agreed that if the order of the court was affirmed, the Award, so far as hours were con-

(Testimony of Clyde W. Deal.)

cerned, would be effective as of March 1, 1928, instead of November 1, 1927. Upon the appeal being affirmed, the rule as to hours was effective as of March 1, 1928.

In all cases, therefore, where on and after March 1, 1928, you employed men on a 12-hour basis you became liable, in accordance with our stipulation and the judgment of the court, for the four hours each day that the men worked over eight hours.

Furthermore, under the schedules which you now have in effect on your three-crewed boats, you have been working the men 8 hours and 40 minutes and refusing to pay overtime for the 40 minutes, on the ground that the men do not work more than 48 hours per week.

We again call your attention to the fact that the court ordered you to observe the rule which states as follows:

'Assigned crews will work on the basis of eight (8) hours or less on watch each day for six (6) consecutive days.'

Any watch eight hours or less therefore calls for a full day's pay. It is true that Exception 3 permits you to work the men 8 hours and 40 minutes in a day, but there is nothing in the rule which exempts you from paying overtime for that extra 40 minutes.

We also call your attention to the fact that the 48 hours per week allowable must be com-

(Testimony of Clyde W. Deal.)

pleted in six consecutive days, under the rule which you have been ordered by the judgment to observe. Under your present schedule this is not the case and the watches of the men run into the seventh day.

This, therefore, is to make formal demand upon you to comply with said judgment and the agreements between the parties with respect to the matters discussed and if the same is not complied with on or before the 20th day of January, 1929, we shall bring contempt proceedings and such other proceedings as may be open to us, to compel you to observe the judgment of the court and the working agreements between the parties.

Very truly,

Derby, Sharp, Quinby & Tweedt

JCS:AM

c. c. to Mr. Booth" [267]

(Testimony of Clyde W. Deal.)

"Southern Pacific Company
65 Market St.
San Francisco, California

January 17, 1929.

Messrs. Derby, Sharp, Quinby and Tweedt,
Counselors at Law
Merchants Exchange Building
San Francisco, California
Gentlemen:

Your letter January 9th, with reference to alleged noncompliance with the judgment rendered by United States District Court on Sept. 29, 1928 in case of the A. T. & S. F. Ry. Co. et al versus the Ferryboatmen's Union of California.

We know of no provision of the award of the Board of Arbitration nor in the judgment of the U. S. District Court referred to by you which would require this Company to compensate its employes on the ferryboats on the basis recited in the next to last paragraph of your letter.

Please be assured that this Company has allowed to its employes referred to by you back pay allowance in accord with the provisions of the rules of the award of the Board of Arbitration.

If you know of any rules in such arbitration award which support the claim contained in

(Testimony of Clyde W. Deal.)

your letter we shall be glad to have you refer to same more specifically, as the quotations of certain portions such award and judgment of the Court as mentioned in your letter do not support your contention for the reason that nowhere in such quotations is mention made of basis of compensation.

Yours very truly,

F. L. Burckhalter"

"Orrick, Palmer & Dahlquist
Financial Center Building
San Francisco
January 22, 1929.

Messrs. Derby, Sharp, Quinby & Tweedt,
Merchants Exchange Building,
San Francisco, California

Dear Sirs:

Your letter of January 9, 1929, addressed [268] to the Northwestern Pacific Railroad Company relative to alleged violation by that company of the award recently made in the controversy with the Ferry Boatmen's Union of California has been referred to us for reply.

You refer to three alleged violations on the part of this company: First, that the men formerly working on the twelve-hour day have not received the proper amount of back pay in accordance with the agreement of the parties.

(Testimony of Clyde W. Deal.)

We have taken this matter up with our steamship officials and, in our opinion, the payments which we have made to the men covering this back pay feature fully comply with the terms of the award and agreement.

The second point raised by you is that our men are now working eight hours and forty minutes per day and that they do not receive overtime for the forty minutes over and above eight hours. It is true that on certain days in the week the men do work eight hours and forty minutes but to compensate them for this overtime, on other days during the week they work only seven hours and twenty minutes, the total hours per week not exceeding forty-eight hours. We feel, therefore, that the men are not entitled to overtime for the forty minutes for those days on which they work over and above the eight-hour period.

The third feature to which you refer is that under present assignments the crews do not work on the basis of eight hours a day for six consecutive days. This is technically correct and has been brought about by the difficulty, if not impossibility, of so arranging our reliefs as to permit the men working the eight hours for six consecutive days. Our company will be pleased to confer with the representatives of the Union in order to work out a solution of this problem.

(Testimony of Clyde W. Deal.)

In the event that you desire to discuss with us any of the matters referred to in your letter, we would be glad to arrange a conference at which the contentions of both parties concerning the points raised by your letter could be thoroughly discussed.

Yours very truly,
Orrick Palmer & Dahlquist" [269]

It was thereupon stipulated by counsel that all the persons' names appearing in the exhibits attached to the complaints have executed assignments to the Ferryboatmen's Union of California an unincorporated association and in turn the unincorporated association assigned the claims to the Ferryboatmen's Union of California, a corporation, plaintiff in this case.

It was further stipulated between the parties that, if there appear to be any discrepancies between the plaintiff's exhibit and the defendants' exhibit as to whether the men worked in one capacity or another, the carriers' statement should be deemed to be correct. Exhibits 8-A and 8-B comprise the carrier's statement referred to in the stipulation.

It was stipulated that all assignments mentioned were executed in favor of the unincorporated association and in turn assigned over from the unincorporated association to the present incorporated asso-

(Testimony of Clyde W. Deal.)

ciation, which incorporated itself as a corporation in accordance with the non-profit laws of the State of California on October 2, 1931.

All of the men who signed these assignments were members of the Ferryboatmen's Union at the time they performed the service and at the time the assignments were made to the best knowledge of the witness.

A copy of the form of assignment executed by the men was duly offered and admitted in evidence as Plaintiffs' Exhibit No. 12.

On cross examination

Mr. Deal testified as follows:

Shortly after these additional pay checks were delivered in the latter part of September or October, 1928, I approached Mr. Hancock in regard to it and discussed it with him. The point was a sufficient amount of money had not been received. All of my dealings in regard to the matter, so far as the Southern Pacific Company was concerned, were with Mr. Hancock, except for a short period when [270] Mr. Lang was working for the company in somewhat the same capacity. I do not remember whether he also handled the Northwestern Pacific matter.

Q. Well, had you had any discussion with Mr. Hancock before the delivery of these pay checks, as to the method to be used in comput-

(Testimony of Clyde W. Deal.)

ing the amount of the extra pay due under the award?

A. I approached Mr. Hancock and told him that in my opinion that for each 12-hour watch worked the men were entitled to 4 hours' overtime. The only discussion there was to it by Mr. Hancock was that the company would pay the men what was due them under the award. That was the extent of the discussion.

Q. To refresh your recollection, after the award was made by the arbitration board, and after we filed in this court a petition to impeach the award, do you recall the matter coming up in the course of a conference, at which you were present, and at which Captain Strothers was present, Mr. Hancock, Mr. Hill of the Santa Fe, and I think Mr. Melnikow, and others, and it being mentioned at that conference?

A. There was no conference for that purpose. It may have been discussed. But I recall that invariably there was no difference of opinion. Mr. Hancock merely said that the company would pay——

Q. Pay what?

A. —or took the position the company would pay whatever the men were due under the award.

Q. According to his construction of the award?

(Testimony of Clyde W. Deal.)

A. He didn't say that. He said the company would pay them what was coming to them, or words to that effect.

Q. How soon after these checks were made out and distributed in October, or the latter part of September, 1928, did you see one of those checks and find out what actually had been paid to those men?

A. I could not tell you how soon. It was certainly not very long thereafter. I could not tell you the exact time.

Q. How soon after the checks were distributed were you, as business manager of the Union, apprised of the method which the Southern Pacific Company and the Northwestern Pacific, and the other carriers as well, had used to figure this extra check for overtime?

A. I was not apprised of the method the companies had used to figure the overtime check until the statement was made in this court, in these proceedings by the company, explaining the method.

Q. You knew, did you not, that the company had not [271] made out these checks on the basis of paying the men four hours' overtime, as you now demand in this case?

A. Most assuredly. I knew the men had not received checks to equal that amount.

(Testimony of Clyde W. Deal.)

Q. Did you make any inquiry to ascertain what basis had been used to figure out the checks they actually received?

A. To the best of my memory invariably the answer I would get was that the company had paid the men all that was coming to them, to the men under the provisions of the award and the judgment, in the opinion of the company. Now, that is about all the argument I could get out of them, Mr. Hancock, or anybody, about it."

Mr. BOOTH: Now, before the award was made, before these arbitration proceedings were had, the 12-hour and 24-hour men received the same amount per month, if it were a judgment, as an 8- and 16-hour man received, did he not?

Mr. SHARP: Now, if the Court please——

Mr. BOOTH: This is preliminary.

Mr. SHARP: I wish to make an objection. I have no objection to your Honor hearing the testimony at all, because I think this is a case in which the Court should have everything brought to its attention, so you can understand the whole situation. I am not trying to keep the Court from hearing it. In fact, I want the Court to hear it, but I do want to make objection as to any testimony which involves men who are not working on the 12-hour watches. I anticipate this is preliminary to the argument that the purpose of the award was to

(Testimony of Clyde W. Deal.)

equalize the hourly rate or the pay between the 8-hour man and the 12-hour man. All that is incompetent, irrelevant and immaterial on the issues, whether or not the 12-hour men got what was coming to them under the award.

The COURT: Overruled; exception.

Mr. DEAL: The 12-hour men did not always get the same amount as the 16-hour men. The wages fixed in the contract were the same per month on regularly assigned watches for the 12-hour men and [272] 8-hour men, but they did not always get the same amount of money.

> "Q. But the 12-hour men worked more hours per month than the 8-hour men did and consequently their hourly earnings were less than those of the 8-hour men. Isn't that correct?
>
> A. Under the old agreement that is correct, and that also was the cause, or one of the principal points before the Arbitration Board, and that was the reason for the arbitration.
>
> Q. Yes, that there was an inequality there?
>
> A. Yes."

I knew nothing about the carriers' method of computation until it appeared in this court.

The truth is that under the company's method of computation, the men are paid less for overtime on the 12-hour watch than on the 8-hour watch. As far as we are concerned, the same overtime rate should be paid in each instance.

(Testimony of Clyde W. Deal.)

I would rather Mr. Hancock or somebody else explain the method used by the carriers, as it is rather confusing to me.

Mr. BOOTH: Q. Mr. Deal, these 12-hour men during this 6 months' period got paid a monthly salary plus the $10 increase awarded by the Board of Arbitration, did they not?

A. That is correct.

Q. Now, these checks which you have shown in the first column of this exhibit of yours, Plaintiff's Exhibit No. 10—wait a minute—in Column D of Exhibit No. 10, what were those checks for? They were not for monthly salary, were they?

A. These were the checks that the company paid the men as a result of their peculiar method of figuring the overtime.

Q. Well, peculiar or not, these checks were overtime checks, were they not?

A. So we were told.

Q. Well, they were not monthly wage checks, they were not for monthly wages, were they?

A. I assume not.

Q. And, as you say, they only included a few cents, in some cases, for time worked over 12 hours.

A. That is correct.

Q. So that these checks, didn't you understand these checks were for what the company

(Testimony of Clyde W. Deal.)

contended was the proper allowance to be made for this [273] difference between 8 and 12 hours on these watches?

A. That is correct.

Q. Yes.

A. Not the difference between 8 and 12, I don't understand anything about it, except that these were the checks that were supposed to cover overtime payments, in order to comply with the award and judgment."

* * *

Q. Now, take the first man, Carl J. Anderson, on your Exhibit No. 10. How much did the company pay him for overtime on this basis?

A. Well, your exhibit from which this is copied showed that Mr. Anderson got $155.97.

Q. Now, the difference between your construction and ours is what? In other words, what amount additional do you claim for him?

A. $186.61.

Q. That is arrived at, was it not, by taking each day as a unit and giving him 4 hours overtime for each 12-hour watch he worked?

A. That is arrived at by following the credit rules signed by the organization and the company.

Mr. BOOTH: I move to strike out that answer as not responsive. The witness is putting his own construction on the rules.

(Testimony of Clyde W. Deal.)

The COURT: Sustained. That is really what it amounts to. What Mr. Booth says is a fact, is it not, with reference to the claim for overtime. What he has just said, isn't that the fact. Read the question please.

(Question read.) A. That is correct.

The COURT: Now, will you state again the companies' position? Can you state it briefly? I am afraid if you do not state it briefly I will not be able to understand it and I will have to call in some accountant and sit down and talk it over with him.

Mr. BOOTH: Our position was this: that an 8-hour watch was not a regularly assigned watch unless the man worked 6 consecutive days per week; that therefore in computing the overtime of these 12-hour men we were entitled to 48 hours per week. Our computation was made on that basis, and that everything over 48 hours was to be [274] paid for, and that we did pay for it on a prorate basis, and that the result of that computation was to give the 12-hour men by these additional pay checks overtime checks, exactly the same compensation per hour that the 8-hour men had received who were working during the same period; and we did not lump those for 6 months as the plaintiffs contend. The method will be explained from the witness stand when we come to our case, somewhat more fully. Does that answer your Honor's question?

(Testimony of Clyde W. Deal.)

The COURT: I yet do not see it clearly. It is because I am ignorant of such matters as this. I do not understand accounting; I do not understand your method of arriving at these amounts.

At this point the chart heretofore marked plaintiffs' Exhibit No. 1 for identification was admitted in evidence as plaintiffs' Exhibit No. 1.

The COURT: What is a straight time assignment? 12 hours?

Mr. BOOTH: There were two classes of straight time assignments, 8 hours on and 16 hours off for 6 consecutive days, and 12 hours on and 24 hours off continuously. And under the agreement of 1925 a man was not entitled to overtime if he was a 12-hour man until he had worked 12 hours on the watch.

The COURT: That has been eliminated, you say.

Mr. BOOTH: Yes. And he was not entitled to overtime if he was an 8-hour man until he had worked 8 hours on a watch, but the 8-hour man's straight time assignment was for 6 consecutive days a week. Now, these men did not work 6 days a week. The most any of them worked was 5 days a week, and we take the position, in making this computation, that we were entitled to 48 hours of service per week before the overtime began.

Mr. SHARP: That is exactly where the trouble lies, your Honor. Here we have a peculiar situa-

(Testimony of Clyde W. Deal.)

tion. The agreement called for the abolition of the 12-hour watches as of November 1st, 1927. [275]

Then pending the appeal we make an agreement that the 12-hour watch shall be abolished as of a preceding date, so you have to reduce the amount to an 8-hour basis when they have already worked 12 hours. In other words, you are trying to put in a retroactive application on the 12 hours to an 8-hour basis.

Mr. BOOTH: You don't reduce them to an 8-hour basis. You reduce them to an 8-hour assignment for 6 consecutive days, which makes 48 hours service a week.

> Mr. BOOTH: Let me refresh your memory a little more, Mr. Deal. You spoke of some claim you had made before these pay checks were delivered in September or October, 1928; that the men were entitled to this 4 hours' overtime each 12-hour watch they worked. Do you recall whether that claim was made at a meeting at which Captain Strother and Mr. Deal were present, at a meeting held in the Terminal Hotel in San Francisco?

A. At a meeting held in the Terminal Hotel?

Q. Yes.

A. I don't think there was any meeting held at the Terminal Hotel in San Francisco where anything like that was discussed.

Q. Well, do you recall a meeting with the railroad representatives and Captain Strother

(Testimony of Clyde W. Deal.)

of the Masters, Mates and Pilots, and Mr. Moreno of the Engineers, with Mr. John Williams, the arbiter of the United States Board of Mediation?

A. I recall several meetings.

Q. That was after we had taken the appeal to this court, was it not?

A. That is correct.

Q. And that was in connection with arbitration agreements that had been signed by these railroads with the Masters, Mates, and Pilots, and the Engineers. Isn't that correct? They were all there together discussing these arbitration agreement?

A. I think it was in connection with that, and also in connection with the——

Q. Now, do you recall whether or not anyone representing any of the organizations made the statement at one of these meetings that the Ferryboatmen's believed they could collect 4 hours' overtime for each day on which they worked 12 hours?

A. I remember quite distinctly making that statement, myself. [276]

Q. Yes.

A. But, as I told you before, there was not any controversy because there wasn't anybody to fight with me about it. The statement was just made "We will pay you what the men are entitled to." That is all there was to it.

(Testimony of Clyde W. Deal.)

Q. Didn't Mr. Hancock say we did not agree to that?

A. I don't recall. He may have said that. I do not recall him saying that at all. I think Mr. Hancock's attitude was always this, and I think it is possibly a very fair attitude, that "We will pay the men what we think they are entitled to what the award says they should be paid, and if there is anything wrong we will take it up afterwards, as we have done in the past." I think that was the sum and substance of his statement. And I do know this much, that Mr. Hancock did not care to argue the matter at all. I just got that impression.

Q. When these pay checks were delivered to these men, these overtime pay checks, were delivered to these men in September and October, 1928, you knew of the fact that the checks had been delivered at that time, didn't you.

A. Yes. I was told the checks had been paid. That is correct.

Q. Why didn't you institute an investigation at that time to see whether this 4-hour overtime claim of yours had been followed out by the carriers in making out these checks?

A. Well, it was quite obvious, looking at the checks that I saw, that the 4-hour overtime had not been paid. But it takes some time. Mr. Booth—

(Testimony of Clyde W. Deal.)

Q. I see.

A. It takes some time to figure the time.

Q. I see. The difference was too great to allow of its having been paid.

A. I was quite convinced that it had not been paid, because it should, in my opinion, have been a much larger check." * * *

Mr. BOOTH: There was introduced here as Plaintiff's Exhibit No. 11 some letters which you identified as being demands on the Southern Pacific and Northwestern Pacific for the payment of this additional overtime. Those letters are in January, 1929. Did you take any further steps to collect this alleged overtime until you filed suit in the State court in San Francisco in March, 1931?

A. The matter was in our attorneys' hands. [277] of course, but it took us some time to gather the data from the individual members as to how much they had received and how much they were entitled to. There was considerable difficulty and it took a long time to do it. There was no court action taken, of course, between those two dates. It took us some time to accumulate these assignments.

It was stipulated between counsel that there has never been any application made by the Ferryboatmen's Union or by anyone on its behalf for a reconvention of the Arbitration Board.

(Testimony of Clyde W. Deal.)

In estimating the amount per hour claimed due for overtime the 12 and 24 hour watches were treated the same as if the men had been on 8 and 16 hour assigned watches. That is correct simply because the rule is specific and sets up the method of computing the hourly rate in the agreement, and there was only one rule after March 1st. Prior to the award and decision and judgment there was only one rule, but there was a different divisor. After March 1st there was only one divisor and that was 2504. Because of this difference in divisors, the hourly rate for the 8 and 16 hour men was greater than the hourly rate for the 12 and 24 hour men. 7014 applied to firemen. 6684 applied to deck hands. The rate of 6684 was arrived at in identically the same manner as the rate of 7014.

The witness then testified that before March 1st, because of a difference in divisors to ascertain the hourly rate, that hourly rate for the 8 and 16 hour man was greater than the hourly rate for the 12 and 24 hour men; that the 8 and 16 hour men worked a less number of hours per month before March 1st than the 12 and 24 hour men worked, and that the 8 and 16 hour men were then paid more per hour but the same amount per month.

At this point Mr. Booth renewed his motion that plaintiff elect as to the remedies they seek in this proceeding which, for the convenience of the court and counsel, has been consolidated for trial. The court thereupon denied the motion and allowed the exception. [278]

The plaintiff rested its case, whereupon the defendants presented their case (defendants' case).

A. J. HANCOCK,

called as a witness on behalf of defendants, after being duly sworn and examined testified as follows:

I am assistant general manager with the Southern Pacific Company, During 1927 and 1928 I was either assistant to the general manager or assistant to the vice-president in charge of operations. From 1927 until now I have been in general charge of labor matters for the Southern Pacific Company Pacific Lines.

I had particular charge of the arbitration which has been testified to and the matters growing out of it. I participated in it and entered into the agreement and handled most of the incidental proceedings. I heard all of Mr. Deal's testimony in this case.

Q. What is your recollection with regard to any claim that was made by Mr. Deal as Secretary and Manager of the Ferryboatmen's Union early in 1928 regarding the claim of the Union that they were entitled to overtime during the 6 months in question here, on the basis now sued on.

A. On several occasions Mr. Deal mentioned that he thought they would be entitled to overtime after the eighth hour for each 13-hour watch that had been worked.

Q. What do you recall about that, if anything?

(Testimony of A. J. Hancock.)

A. Well, my recollection of it was that I did not see any justification for the claim.

Q. Well, did you and Mr. Deal, or anyone on behalf of the Ferryboatmen's Union ever sit down after that time and agree either orally or in writing as to the basis on which these overtime checks should be issued, which were delivered to the men in October, 1928?

A. No, sir, we did not.

I was familiar with the course of the litigation in that case, the application to this court for an annulment of the award and the appeal to the Circuit Court of Appeals. After the decision in the Circuit Court of Appeals on August 20, 1928, affirming the judgment of the district court, I did in consultation with [279] representatives of the other railroad companies parties to that litigation, prescribe and send to the Accounting Departments of the respective companies a formula for the ascertainment of the amount due the Ferryboatmen for overtime who had worked on the 12 and 24 hour watches during the six months in question; except that in the case of the Southern Pacific the formula was sent to the Superintendent of Steamers to prepare the overtime payrolls and a copy to the Accounting Department for checking purposes. The Superintendent prepared the overtime payroll and the Accounting Department checked it and issued the checks.

(Testimony of A. J. Hancock.)

Q. Did you set down in writing at that time a memorandum as to the application of the award, as you construed it, to this back pay for alleged overtime over 8 hours during the 6 months by these deck hands and firemen?

A. Yes, sir.

It was upon that formula that the checks were issued. The instructions were that the checks be prepared in accordance with the formula. Witness identified the formula and it was received in evidence and marked

DEFENDANTS' EXHIBIT A.

Said Exhibit was in words and figures as follows: [280]

MEMORANDUM as to application of (313 divisor) wage rates and method of computing back pay for Marine Firemen, Deckhands, Cabin Watchmen, and Night Watchmen, serving on 12-hour watch assignments, and who were accorded 48-hour week under Arbitration Award.

* * * * * * * * *

(Testimony of A. J. Hancock.)

Monthly, Daily and Hourly Rates of Pay are as follows:

Classification	Monthly Rate	Daily (8-Hour) Rate	Hourly Overtime Rate
Passenger and Car Ferries and Tugs Towing Car Floats.			
Fireman	$146.35	$5.6109	.7014c
Deckhand	139.40	5.3444	.6681c
Cabin Watchman	139.40	5.3444	.6681c
Night Watchman	120.00	4.6006	.5751c
Matron	85.00	3.2588	.4073c

Employes who served on twelve (12) hour watch assignments, (56-hour week) are entitled to the benefits of forty-eight (48) hour week, in way of additional compensation, commencing with March 1st, 1928. That is, (except on Fire Boats where there is no change) they should receive the same compensation as would have accrued to eight (8) and sixteen (16) hour assigned men, working the same number of hours.

It is concluded that the best way to arrive at the balance due any such individual, is to take the total number of eight (8) hour days, and the number of hours overtime served during a month, and multiply the same by the above enumerated daily and hourly rates, then allow as additional compensation, the difference between the total so obtained

(Testimony of A. J. Hancock.)

and the amount of compensation (exclusive of any special adjustments) the employe has already received for that month. In most instances this can be reduced to a certain additional amount per day or hour, and so shown on the payroll for more complete record purposes.

Care should be exercised to see that credit is taken for back pay allowances on special payrolls for months of March and April, 1928, the $10.00 per month wage increase allowed, being included on regular payroll commencing with May 1st.

Under above, individual back pay allowances for months of March, April, May, June, July and August, should be computed separately for each month, but all included on one payroll, that one paycheck may be issued to cover all that is due any employe. For month of March make additional allowance only in connection with watches that were commenced at midnight of February 29th—March 1st, 1928, or thereafter. For August include on back payroll only watches commencing prior to midnight of Aug. 31st-Sept. 1st, 1928.

Commencing with Sept. 1st, 1928, such employes involved should be compensated on the new (48-hour week) basis on regular payrolls. Hours of service assignments as provided for in Rule 6 and its exceptions as contained in the Arbitration Award, should be made effective as rapidly as practicable.

A. J. HANCOCK.

San Francisco, Cal.

August 30, 1928. [281]

(Testimony of A. J. Hancock.)

The monthly rate shown in the formula includes the $10 per month watch increase granted under the arbitration award. The daily rate was arrived at under the 313 divisor, the 313 being arrived at by taking the 365 days of the year and subtracting 52 Sundays. The daily rate was arrived at in the same manner as required by Subdivision A of the note to Rule 2 of the Agreement of 1925. That rule, so far as it applied to the 8 and 16 hour watches, was not changed by the award of the Board of Arbitration. The hourly overtime rate shown in Defendants' Exhibit A was arrived at by dividing 8 into the daily rate; the hourly overtime rate, as there shown, is on the basis of an 8 hour day. There were a number of men working the 12-hour watches under some of the exceptions mentioned in Rule 6 of the Agreement of 1925 but they are not involved in this controversy.

All my memorandum, Defendants' Exhibit A, had to do with was the computation of back pay for men serving the regular assignments -12 and 24 regular assigned watches.

Mr. SHARP: Well, I am willing to stipulate what you have in mind on that, Mr. Hancock. I am willing to stipulate that no claim is made in this case as to any men who may have been worked by the company under any of the ten or twelve exceptions to Rule 6. The only claims represented here are on behalf of men who were governed by the A and B parts of Rule 6. Is that what you had in mind.

A. Yes.

(Testimony of A. J. Hancock.)

If the railroad companies had not filed any petition to impeach the award it would have gone into effect on November 1st or as soon as it would have been practical to place it in effect. On October 31st we had two classes of regularly assigned watches—the 8 and 16 hour watches and 12 and 24 hour watches. Instead of changing the 12 and 24 hour watches over to 8 and 16 hour watches [282] on November 1st, the companies applied to the court to annul or rather impeach the award and went ahead and kept the same men on the 12 and 24 hour watches who had been working on them before. And as those men dropped out of service or were transferred to some other watch the vacancy was filled and the incumbent who filled the vacancy retained the 12 and 24 hour watch arrangement. If a 12 and 24 hour watch man saw fit to take a watch off, the man who filled his place filled it as a 12 and 24 hour man.

It is not true that in computing the back pay that was paid the 12 and 24 hour men in September or October, 1928, that all of the hours they had served were lumped together and some divisor used. The formula (Exhibit A) covers that in the statement.

> "Under above, individual back pay allowances for months of March, April, May, June, July and August, should be computed separately for each month, but all included on one payroll,

(Testimony of A. J. Hancock.)

that one pay check may be issued to cover all that is due any employe."

That was done to save issuing six separate pay checks for one individual.

"Q. Now, as a part of this formula, will you state whether the formula contemplated that before a 12 and 24 hour man should be entitled to any overtime he should give 48 hours' service in a week.

A. That is correct, in so far as the straight time assigned was concerned, but, in the event a 12 and 24 hour man had worked overtime—by overtime I mean time in excess of his regular assigned watch of 12 hours,—he would then, of course, have additional compensation due him for that overtime in excess of the 12 hours at the higher rate that was established in the formula.

Q. Now, these rates that were established in the formula, that is, hourly rates, were substantially higher, were they not, than the rates which had previously been received by the 12 and 24 hour men for hourly work overtime?

A. Yes, sir, they were.

Q. Did this formula, if applied to a given case, result in paying the man who had worked 12 hours on any one watch, or succession of watches, exactly the same amount per hour as had been paid the man who worked on the 8 hour watches?

(Testimony of A. J. Hancock.)

A. Yes, sir. That is exactly the same amount for each hour [283] worked. You see, the 12 and 24 hour man had worked in any given month more hours, hence he received more money than the 8 and 16 hour man because of that fact; but his rate, the rate per hour, at which he was compensated for the excess number of hours, in fact, for all of the hours served, was exactly the same as that received by the 8 and 16 hour man."

After the Circuit Court of Appeals affirmed the award and the instructions as shown on Defendants' Exhibit A were issued, the company issued payroll vouchers for the additional amounts computed in accordance with that formula.

Mr. BOOTH: I have here, if the Court please, photostatic copies of the payroll vouchers as issued, or, rather, a sample of each payroll voucher issued, both from the Southern Pacific Company and the Northwestern Pacific Company, and in connection with our defense of payment and also in connection with our defense of relief and our defense of accord and satisfaction, I should like to offer these in evidence with the understanding that counsel will stipulate that all of the plaintiffs' assignors were paid by the respective companies by the same form of payroll voucher, and that they endorsed them on the back over the word "Payee". The same is shown on these photostats.

(Testimony of A. J. Hancock.)

Mr. SHARP: That stipulation will be made, but at the same time I will ask counsel to stipulate further with respect to these checks, that the vouchers used are the customary form of vouchers in use at that time and for many years prior thereto, except that there was printed thereon, on the Southern Pacific checks, the words "For additional compensation account Arbitration Award between Southern Pacific Company and Ferryboatmen's Union, October 31, 1927, for March to August, 1928, inclusive;" and that the words "For service as shown on payroll for period indicated herein" were deleted; that with respect to the Northwestern Pacific check, the form is identical with the customary form used, first, except that the words, in rubber stamp, were placed thereon "August 31, 1928, account wage [284] adjustment." The rubber stamp was "Balance due for period March 1, 1928, to August 31, 1928, account wage adjustment."

Mr. BOOTH: The stipulation is that the companies took their ordinary forms of payroll voucher and in the case of the Southern Pacific Company they stamped on there what the counsel has read, and in the case of the Northwestern Pacific stamped what counsel has read, thus making what may be argued to be a special form of voucher.

I would like to introduce this photostatic copy of the front and back of the Southern Pacific Company's voucher as Defendants' Exhibit B, and I

(Testimony of A. J. Hancock.)
want to call the attention of the Court in this connection to the endorsement: "This voucher is endorsed as an acknowledgement of receipt of payment in full of account as stated within" "Signed" "Payee".

A sample of each Southern Pacific Company payroll voucher so issued was then received in evidence as

DEFENDANTS' EXHIBIT B

and is in words and figures as follows: [285]

Standard

Form 217

Pay-Roll Voucher—Services No. 36558

[Insignia] SOUTHERN PACIFIC COMPANY
Pacific Lines

San Francisco, California, September 30, 1928.

Pay to the
Order of Frank J. Bardoni Miscellaneous
The sum of * * * One Hundred Forty-seven & * 81-100 Dollars $147.81
Arbitration Award Between So. Pac. Co. and Ferry Boatmen's Union, Oct. 31, 1927.
For March to August, 1928, inclusive.
For Additional Compensation Account

When signed by the Assistant Treasurer or his duly authorized representative and properly endorsed by payee, this voucher becomes a sight draft on the

(Testimony of A. J. Hancock.)

Company and is payable at the office of the Company at San Francisco, Calif. [Illegible]

For Assistant Treasurer.

Oct. 18 28 C

F. L. McCaffery

[Illegible] Auditor

Payable at the option of Holder through any bank

Endorse Here

This voucher is endorsed as an acknowledgement of receipt of payment in full of account as stated within.

Frank J. Bardoni

Payee

PAID 10 16 28 (Stencil)

(Stamp) City Collections Oct. 16 1928 Bank of Italy (branch illegible) [Insignia] 1-B 63 111

Endorsements must be technically correct. If made by an "X" they should be witnessed and residence of witness stated. Signature of payee must agree with name on face of voucher. [286]

The Northwestern Pacific Railroad Company payroll voucher referred to in the evidence was then received in evidence as

DEFENDANTS' EXHIBIT C,

and is in words and figures as follows: [287]

(Testimony of A. J. Hancock.)

Form 475

Pay-Roll Voucher—Services No. 6003

Northwestern Pacific Railroad Company

San Francisco, Cal., Sep. 29 1928

This check not valid if drawn for more
than two hundred (200) dollars

To S. Anderson Dr.

Exactly $125 and 49 Cts. Dollars $125.49

Balance due for period Mar. 1'28 to Aug. 31'28

Account wage adjustment

In full for services rendered during month of Sep.
1928 N. P. 90-863

When signed by the treasurer or his duly authorized representative and properly endorsed by payee, this voucher becomes a Sight Draft and is payable at the treasurers office of this road in San Francisco, Cal.

W. A. Werner
For Treasurer.
W. B. Burris
Comptroller.

Payable at the option of holder through any bank

ENDORSE HERE

This voucher is endorsed as an acknowledgment of receipt of payment in full of account as stated within.

S. Anderson
Payee.

(Testimony of A. J. Hancock.)

Received payment C.C.C. Oct. 26, 1928
Federal Reserve Bank
of San Francisco

Endorsements must be technically correct. If made by an "X," they should be witnessed and residence of witness stated. Signature of payee must agree with name on face of voucher. [288]

Q. Did you have anything to do with directing these special endorsements to be put on the Southern Pacific vouchers?

A. Yes, sir.

Q. Now, it was prior to that time that you had these conversations with Mr. Deal in which the claim here was asserted and this claim brought out for four hours' overtime on these 12-hour units?

A. Yes, sir.

Q. Will you say whether or not it was because of that attitude on the part of the representative of the men which caused this to be put on the voucher?

Mr. SHARP: I object to the question as calling for the conclusion of the witness. What was in his mind is rather speculative now, to put back his mind to that time.

The COURT: He can state what he had in mind, if that is the reason he put it on there. Objection overruled; exception.

A. Yes.

(Testimony of A. J. Hancock.)

Q. It was?

A. Yes.

On Cross-examination

Mr. Hancock testified as follows:

I never sat down and discussed with Mr. Deal, or any one representing the Union, the basis on which the checks should be made out, in the event Judge St. Sure's judgment should be affirmed. The conversations with Mr. Deal were held previous to the time the Circuit Court of Appeals passed upon the order of Judge St. Sure.

At that time no one was in a position to state what the amount of the overtime would be, as no one could foretell what the ruling of the court would be. Mr. Deal and I never agreed as to the basis upon which the checks were to be made out, if they were going to be made out at all. [289]

As a matter of fact we never even discussed the matter as to the basis upon which the checks would be made out or the manner in which the award would be applied. We never discussed that at any time. The checks were eventually issued and the formula prepared after the affirmance of the judgment without taking it up with Mr. Deal at all.

I know that the attorneys for the Union were John L. McNab, Raymond Benjamin, Joseph C. Sharp and Derby, Sharp, Quinby & Tweedt.

Mr. Booth stipulated that the carriers never consulted with the attorneys for the Ferryboatmen's

(Testimony of A. J. Hancock.)
Union with respect to complying with the judgment after the award was affirmed. The checks were given out after the judgment was obtained and no consultation was had with any of the attorneys of record whatever.

The witness testified that in preparing the formula he not only did not take it up with the attorneys for the Union but he did not take it up with Mr. Deal either. At no time was Mr. Deal or any one representing the Union told as to how the company was to compute the checks.

Going back to 1918 in the days of the Railroad Administration and on down to now, there have been hundreds of decisions rendered, to all of which one or more organizations were parties, and it has been the universal and accepted practice for an employer to go ahead and apply the provisions of any of those decisions that come down.

If there are any complaints as to whether the checks are correct or not, the ear of the carrier is always open to it. In all the decisions that have been handed down there has not been one instance where we asked the attorneys how to apply it, because we deal in that thing all the time and understand the language of them and try to apply them fairly. [290]

When we have controversies and later on a decision is handed down we make the checks out in good faith as we believe they should be made out. That is the uniform practice.

(Testimony of A. J. Hancock.)

Q. And thereafter, if there is any mistake, you cure it. In other words you are always open to have men come in and you listen to them and make corrections, if any corrections are to be made?

A. It would depend altogether on the character of the statement.

Q. In any of these numerous cases to which you have referred, Mr. Hancock, after you have made out the check, as you believe in good faith, it should have been made out, and the man comes in and tells you it should have been something else, you immediately make out the check in the proper way and always have?

A. I would not say that in a case like this. These were a special check, Mr. Sharp.

Q. Well, in every case—

A. (continuing) And issued for the purpose of disposing of the controversy and payment of the compensation that was due under the award.

Q. In all these cases, as I understand you, you try in good faith to give the men what is due them. You never try to get around any decision against by any trick or artifice; you pay what is due.

A. We may have a difference of opinion sometimes.

Q. Yes.

A. But we try to do what is right.

Q. What I am coming to now is this, Mr. Hancock. As a matter of fact, in actual practice in hun-

(Testimony of A. J. Hancock.)

dreds, if not thousands, of cases, where men have received payment from you, whether for wages or as the result of controversy, in which the usual form of check is used and the man came back to you after cashing the check and tell you more money is due, you take up their claim, don't you?

A. Are you talking about under ordinary circumstances?

Q. Under ordinary circumstances, yes.

A. Under a case where a locomotive engineer might be running, we [291] will say, between Portland and Tillamook and his time slips will come into San Francisco and the timekeeper would post up his time, the time for payment comes and one of his time slips went astray in the mail, and by virtue of that the pay check was short, the amount of one day's pay, and the man took up the case and it was found to be correct, for that amount there would be either a special check issued, a time voucher we call it, or it would be added to his pay check for the next month. That would be an accumulative condition.

Q. As a matter of fact, Mr. Hancock—

A. The handling of current earnings.

Q. As a matter of fact, Mr. Hancock, in all these years you have been with the company, and not referring to the present controversy, the company has made it a uniform practice of never refusing to take up any claims for underpayment on account of

(Testimony of A. J. Hancock.)

checks, and made the point that inasmuch as the checks had been cashed, the man could not correct any mistakes they claim?

A. Well, we will always listen to a man's complaint.

Q. Well, could you recollect one single case in all the years you have been with the company, with your knowledge of the custom and practice of the company, involving hundreds and thousands of cases where even once the company has ever raised the objection that it would not consider the merits of the controversy because the man had cashed the check? Can you think of one such a case?

A. Well I do not know that I could definitely give you the facts with respect to an individual case, but we have a great many cases where we can not go back and allow additional compensation.

Q. That is true. There are many cases—

A. (continuing) Because the men are wrong a great many times.

Q. But the reason you refuse to pay those checks is because the men are wrong. But you have never raised the point and said "You [292] have cashed the checks and therefore we can't discuss the merits of your claim". That is correct, Mr. Hancock?

A. We will say—

Q. Now, you can't think of one such case, can you?

A. Well, I could not answer that question definitely right now.

(Testimony of A. J. Hancock.)

Q. At this time there isn't a single case to which you can call the Court's attention where you have raised that point?

A. I haven't in mind all the transactions that take place on that.

The ferry boats have been operated by us on San Francisco Bay for many years. Order No. 82 was the first general agreement made with the men.

Article 4 of order 82 reads exactly the same as Rule 6, A and B in the 1925 agreement. This has been identical in language at least since 1918 and up to the period of the 1925 agreement and today, except as modified by the Arbitration Award.

I cannot remember a single instance in which we refused to consider any claim on the point that the man had cashed the pay check and therefore the company would not consider the claim. There are a great many contentions made and I cannot remember them all.

I did not say they were making claim for overtime on a certain basis. I was given to understand they contemplated making some technical claim and it was for the purpose of forestalling those things that I changed the form of the check. I did not indicate to anyone representing the Union what was in my mind in this respect. I did not tell the Union I thought anything of that kind. I did not tell the Union or its attorney or any of its representatives why we were given checks on a special form.

(Testimony of A. J. Hancock.)

The checks I take it speak for themselves. I did not contact the attorneys. I did not tell Mr. Deal or any other officer of the Union what we were doing. My formula requires aggregating the hours by months and figuring it on that basis. That [293] is the only way you could do it, because crews would work a different number of hours, during different months.

The basis of the formula was this; the employes had contended for many years that a man on a 12-hour watch was working 56 hours a week for the same monthly wage that a man working 48 hours a week on an 8-hour watch was working, and the purpose of the formula was to equalize the two; in other words, to allow the man who was working 56 hours a week exactly the same amount of compensation per hour that the man received who was working but 48 hours a week, and it gave the man, the 56 hour week man, in addition to his monthly salary, it gave him the increased rate, the difference between the 48- and the 56-hour week for each of the 56 hours he worked, and, in addition, the higher rate of pay so arrived at for any overtime he might have worked during the period and in excess of 48 hours.

Q. The fact is that under your formula no man was entitled to overtime until he has worked 48 hours a week.

A. I will state positively it is not true.

(Testimony of A. J. Hancock.)

> — and I will tell you why. If a man working, say on a 12-hour watch, his boat is late, and on that particular day he was out 13 hours, he would get an hour's overtime in excess of the 12 hours, regardless of the 48-hour feature.

As a matter of fact, on the average, the 12-hour men would work some weeks five 12-hour shifts and other weeks four 12-hour shifts.

They would average 56 hours within a cycle of three weeks. They would be on duty on 12-hour watches. So that if a man worked five 12-hour shifts one week, five 12-hour shifts another week and four 12-hour shifts the third week, in the three-week cycle that would make a total of 168 hours, or an average of 56 hours a week, in a cycle of three weeks. In that cycle of three weeks there would be one week in which the man worked four 12-hour shifts.

> Q. Now in the week in which a man worked 48 hours, [294] under your formula, if you were entitled to 48 hours work before the man is entitled to overtime, under your formula he would get no overtime at all for that week.
>
> A. He would have worked 48 hours. But you will remember that man was paid on a monthly basis.
>
> Q. Yes.
>
> A. He was paid on a monthly basis. That is the angle that you must consider there.

(Testimony of A. J. Hancock.)

Q. Yes, I am glad you brought that out. But let me still direct your attention to the week in which he worked four 12-hour shifts, or a total of 48 hours. Under your formula, the man having been paid a monthly salary, was entitled to no overtime pay at all because he had worked no overtime, because he had worked only 48 hours that week.

A. No. If you allocate it down to the individual week in which the man through the alternating of the crews only worked the 48 hours, my formula if applied to a man who worked under a broken shift arrangement, only four shifts, or 48 hours within that week, he would not have any overtime.

Q. And, as a matter of fact, that was the method you applied in figuring the overtime checks, samples of which have been introduced in evidence?

A. The formula says that they will be taken by the month.

We equalize the 12 and 24 hour man's compensation for every hour he worked on the basis of the compensation of the 8 and 16 hour man. In effect it gave the men that worked a 56-hour week, or a series of 56-hour weeks, for his monthly salary, it gives him an extra day's pay for each week at the higher rate of pay.

(Testimony of A. J. Hancock.)

THE COURT: Mr. Hancock tells you you have the formula and you can work it out yourself. If you don't have some one explain that I am going to call in someone to help me work it out. If you can aid me I wish you would do it.

Mr. Booth then stated that he had and would call a witness who actually made up the checks from the payrolls and who would explain the actual manner of application of the formula.

> Now, when a man worked during the period from March and the 6 months thereafter following, in 1928, a 12-hour watch, you did not allow overtime by giving the man overtime credit for the last 4 hours of each 12-hour watch, did you?
>
> A. There was a rule to cover that. [295]
>
> Q. I am asking you, did you or did you not give the man overtime for each four hours, the last four hours of each 12 hour watch?
>
> A. The overtime was prorate.

Q. Mr. Hancock, I would like to have you answer the question.

A. The rule says—

THE COURT: Never mind the rule; answer the question.

A. He was allowed one and one half days compensation.

It was not the purpose of my formula to secure to the men overtime for the last four hours of each 12-hour watch worked by them.

(Testimony of A. J. Hancock.)

The purpose was to equalize the 12 and 24 hour men [296] with the 8 and 16 hour men. It did not make any reference to the overtime feature, except we dealt in what was actually overtime.

Rule 6-A and B, which prevailed in the 1925 agreement until modified by the award is the same as was in Order 82 in 1918. From 1918 to 1925, Order 82 has been in actual practice and operation. The 1925 agreement simply incorporated the language in the 1918 agreement and we followed and operated under that rule until around September, 1928. From then on we operated under that rule as handed down by the Arbitration Board.

When a man is on an 8 hour assignment and works ten hours under Rule 6, he is entitled to two hours overtime, if he is on a straight hour assignment. It was the practice to give overtime for that excess period since Recommendation 82. It has been the rule to allow overtime at the prorate rate for time worked in excess of the straight time assignment, except where it was provided for by the long and short watches in connection with the alternating of the crews.

THE WITNESS: Disregarding any case covered by special agreement and disregarding cases covered by the exceptions to the rules, it has been the uniform rule and practice since 1918 to date that where a man is assigned on an 8 hour watch, but as a matter of fact, on any particular day he

(Testimony of A. J. Hancock.)
works in excess of eight hours, he is entitled to overtime for that excess at a pro rata basis.

That has been the uniform rule and practice established in Recommendation 82. If a man's regular assigned hours were 8 hours and he worked in excess of that, unless it was provided for in an agreement, he would receive overtime, at a prorate rate. That started in the year 1918.

Redirect Examination

The witness testified that since 1918 the 8-hour [297] regular assigned watch has been under the following definition: "Eight hours or less on watch each day for 6 consecutive days".

That is the rule today, the rule under the 1925 agreement, under the 1919 agreement and under Order 82 of the Labor Board. During all that time, from 1918 down, the 8 hour watch was a watch of eight hours or less on watch each day for 6 consecutive days.

Friday, September 14, 1934

Mr. Hancock recalled for cross examination testified as follows:

In preparing this special form of check or payroll voucher, the only changes made were to eliminate the language "For services as shown on payroll for period indicated hereon" and to substitute therefor the words "For additional compensation account arbitration award between Southern Pa-

(Testimony of A. J. Hancock.)
cific Company and Ferryboatmen's Union October 31, 1927 for March to August, 1928, inclusive".

That is all that was added; but there was already on the back of the check a receipt in full. It was designed to close the account.

It was the general form of check currently in use. It had on the back of it the following language:

> "Endorse here. This voucher is endorsed as an acknowledgement of receipt of payment in full on account as stated within."

At the same time that form of check was currently in use there was a form distributed on the ferry boats by which the men after cashing their checks could come in and make claim for alleged shortages in wages.

Mr. BOOTH: Mr. Gorman will be our next witness and he is familiar with this. He says this is our regular shortage form, used on all divisions, including the ferry steamer division, which the man [298] fills out and submits when he claims the pay check has not taken into account as many hours as he actually worked.

It was stipulated that the form could go in evidence as Plaintiffs' Exhibit No. 13: and is in words and figures as follows:

(Testimony of A. J. Hancock.)

8-29-5M CLAIM OF SHORTAGE IN WAGES

L-7423

Mr.................................. Station............................. ....19......

....

Following is submitted in support of claim of shortage in pay check for .... period of ....19......

Date	Date	Hours Worked	Hours Claimed	Rate.	Total time claimed...........at	
					....	$......................
1	16					
2	17				Amount earned at Piece	
3	18				work or Tonnage Rate	$....................
4	19					
5	20					
6	21				Total Wages claimed	$
7	22					
8	23					
9	24				LESS DEDUCTIONS	
10	25					
11	26				Hospital	$
12	27				Insurance	$
13	28					
14	29					
15	30					
**	31				Amount claimed	$....................
					Amount received	$....................
					SHORTAGE CLAIMED	$....................

Remarks: ....

....

Signed.. WORKING NO.....................

It was also stipulated as part of the same stipulation that the customary practice is for a man to

(Testimony of A. J. Hancock.)
cash his check and make out one of these forms afterwards, and then take it up with the proper officials. [299]

It was also stipulated that no such forms were made out or presented by any of the plaintiff's assignors.

On further Re-direct examination
Mr. Hancock testified as follows:

There has never been any difference in the ferry service between the amount per hour paid for overtime and the amount per hour paid for the hours served on regular assigned watches. If an 8-hour man worked 10 hours, he got exactly as much and no more for the tenth hour as he did for the first hour. The effect of my formula was to give these men who had worked on 12-hour regular assigned watches exactly the same amount for the twelfth hour that they received for the first hour. That was the amount which was currently paid at the time—the rate per hour which was currently paid at the time to the 8 and 16 hour men. The hourly rate was arrived at under paragraph A of Rule 9 of the 1925 agreement. Exactly the same result is obtained by dividing the annual salary by 2504, or dividing the annual salary by 313 and dividing that by 8.

When I speak of the 313, I refer to the note to Rule 2, which also was not changed by the arbitration award, which reads:

(Testimony of A. J. Hancock.)

"Employes working broken assignments will be paid in following manner: (a) on 8 and 16 watches, allow for number of days worked on basis of 12 times the monthly salary, divided by 313." [300]

On further Recross Examination
Mr. Hancock testified:

In the exhibit filed as "Defendants' Exhibit A" yesterday we show the hourly overtime rate as .7014. That means that the man is entitled to 70.14 cents per hour, if he is a fireman, for each hour he works, whether it is the first hour or the twelfth hour of his watch.

In obtaining the 70.14 cents per hour rate, either formula will give you exactly the same result and 7014 would be the correct hourly rate for a fireman under a new established monthly rate as set forth by the arbitration award. The hourly rate applies to the overtime hours as well as to the regular hours, so if a man works any hours overtime in excess of straight time assignment, he is paid for that extra hourage at the same rate. In the marine service the rate is prorated. In some of the other services, overtime is punitive or time and one-half the regular rates. In the case of marine employes, it is all prorated. For whatever hours overtime the men worked, the firemen worked, during the period in controversy, whatever number of hours that may be, they are entitled under the award to be

(Testimony of A. J. Hancock.)
paid for those overtime hours at the rate of 7014 per hour. Whatever hours were worked.

Mr. Sharp called the attention of the witness to his testimony that it has been the uniform rule and practice since 1918 to date that where a man is assigned on an 8-hour watch, but as a matter of fact on any particular day he works in excess of 8 hours, he is entitled to overtime for that excess at a pro-rate basis, and asked whether that meant an 8-hour regular assigned watch. The witness replied: "I mean or had reference to an eight hour watch that was a part of the regular eight hour assignment. In other words a man—or the assignment upon which the man served was that normally for 6 days a week. Now, you will remember that in [301] the case before us these men did not work every day of the week." If his regular assigned watch was exactly eight hours and he worked in excess of eight hours, then he would receive overtime at the prorate rate for the excess time worked. So that if on a particular day a man is assigned to an eight hour watch and works, say, nine hours, he is entitled to one hour over time at the rate of 7014 and by the same token, if that man was on an eight hour, 6 day assigned watch and worked 12 hours, he is entitled to four hours overtime, if he was on an assignment of that kind, a daily assignment. Where a man is assigned to an 8-hour watch, each hour he works in excess of 8 hours is overtime, where it was a part of an assignment of 6 days per week.

(Testimony of A. J. Hancock.)

The men were assigned on the 12 and 24 hour basis during the period the case was in court and the men were assigned to those watches by the company. All the men involved in this controversy were during the period in controversy assigned by the company to work on the 12 hour watches in the number set out in the exhibit. The men bid in the 12-hour watches and were so assigned to them. But the company assigned the watches. During the entire period in controversy the men worked on 12-hour watches which were assigned by the company.

Mr. SHARP: Was it the purpose of your formula to make a deduction for the fact that the men only worked four or five days a week instead of six?

A. Well, if you are contending from that standpoint, then you are asking for dead days on the days the men did not work. That is what you are trying to get at.

Further Redirect Examination

Mr. BOOTH: Mr. Hancock, following this same illustration by Mr. Sharp, the 8 and 16 hour man in March, 1928, worked more than 20 watches during that month, did he not? [302]

A. He worked —

Mr. SHARP: Now, just a minute please. I am going to make the same objection at this time your Honor, that any questions with respect to what

(Testimony of A. J. Hancock.)

has happened with respect to men not involved in this impeachment are incompetent, irrelevant and immaterial, and I would like to preserve that objection, though I do think in fairness to the Court it ought to hear the evidence, subject to my objection.

THE COURT: Yes, overruled.

Mr. SHARP: Exception.

Mr. BOOTH: Q. The 8 and 16 hour man who was working 8 hours on 16 hours off 6 days a week, if there were four weeks in the month of March, would work 26 eight-hour watches, wouldn't he?

A. He would work six watches each week, and four times six would be 24; he would work approximately 26 or 27 watches a month.

Q. And he would receive, if he were a fireman, under the award, $146.35 for those 26 eight-hour watches.

A. That was the monthly rate in effect, yes, sir.

Q. Yes.

A. Provided he did not lay off, of course.

Q. I understand. He worked all month. Now, this man Anderson here, assume he worked all month, and worked 20 watches, he got the same amount, didn't he, $146.35, in the final adjustment?

A. For the 20 watches he got $146.35, then subsequently he received an extra day's pay.

(Testimony of A. J. Hancock.)

Q. I know, but I am talking about before we made the adjustment.

A. Yes, sir.

Q. In controversy here.

A. Yes, sir, before the adjustment.

Q. So the two men got exactly the same amount, the 8-hour man for 26 watches and the 12-hour man for 20 watches.

A. That is correct.

Q. Now, if you reduce those 20 watches to eight hours each by taking off four hours overtime, isn't the net result of it that the 12-hour man will be getting $146.35 for 20 eight-hour watches and the 8-hour man $146.35 for 26 eight-hour watches.

A. Yes, sir, that would be right.

Q. So that the net effect of the adjustment was that you took the total number of hours the men had worked during the [303] month on this 12-hour watch and you multiplied that by 1014 and then you deduct from that the amount that had been paid him for his monthly salary. Isn't that the effect of it?

A. Yes, sir, considering straight time.

Q. Straight time, considering straight time, because overtime over 12 hours is not involved here.

A. That is right.

FRANCIS EDWARD GORMAN,

called as a witness on behalf of defendants, was duly sworn and testified as follows:

Direct Examination

I am employed by the Southern Pacific Company. At the present time as trainmaster's clerk. I handled the payrolls of the steamer division from the latter part of 1923 to the latter part of 1930. I am familiar with the adjustment that was made in September and October, 1928, with the former 12 and 24 hour men. I prepared the payroll on which these pay checks were based. In so doing I followed the principle laid down by Mr. Hancock shown in the memorandum "Defendants' Exhibit A."

For illustration we will take Fireman No. 8 on Plaintiffs' Exhibit 8-A, page one, A. L. Costa. He worked every 12-hour watch during the six months without any layoff at all. His overtime pay was figured month by month under the formula, Defendants' Exhibit A, using the base rate of 70.14 per hour, the hourly rate for a fireman. He worked 21 watches in March. We arrived at the amount paid him for the month of March as follows (Tr. p. 130):

> Previous to the award he was paid $146.35 for his whole assignment of 21 watches, previous to the adjustment under the award. When we made the adjustment we made the 21 watches into 8-hour days. That would be there 21 twelve-hour watches or 252 hours, or the equivalent of

(Testimony of Francis Edward Gorman.)

> 31 1/2 eight-hour days. We multiply 31 1/2 eight-hour days by the 8-hour daily rate.
>
> It would be $176.43. We had already paid him under the 12-hour basis a monthly guarantee of $146.35; we subtract the $146.35 and the result we obtain, allowing him an additional four hours for each 12-hour watch and the net was approximately $30.08. [304]

The same method follows through each month in computing this man's additional payment.

Take the case of Anderson, number 1 on page 1 of EXHIBIT 8-A (Tr. p.131):

> He worked twenty 12-hour watches. The same principle was used. For twenty12-hour watches we allowed him an additional four hours for each watch. That would give him 30 eight-hour days. Thirty 8-hour days at the 8-hour rate of 56109 would be equal to $168.33, approximately. We had already allowed him $139.38 under the 12-hour assignment rule; we subtracted that from the $168.33 and he received an adjustment of $28.94.

And he only worked 20 out of 21 watches. therefore he got one watch pay less.

I can give an illustration of a man who worked only part of the watches in a month. Page 1, No. 48 (Exhibit 8-A), Louis J. Leimar during March worked 11 twelve-hour watches. The application of the formula was:

(Testimony of Francis Edward Gorman.)

Eleven 12-hour watches, for each 12 hour watch, allowing him one and a half eight-hour days, or four hour overtime, over the eight hours would result in 16-1/2 eight-hour days. Now, 16-1/2 eight-hour days at the 8 hour rate, 56109, would give a result of $92.58—5798 hundredths, or 58 cents, approximately. Now, he had been paid at his 12-hour rate $79.10. By deducting the amount he had been paid by his 12 hour rate from what he would have been paid by the 8-hour rate, gives a result of $13.48, or the amount allowed him as additional compensation.

Q. Now, in each case, in the case of each of these men shown on Exhibit 8-A, firemen and deck hands, and there may be some cabin watchmen there, did you figure each month during those 6 months they worked in the same manner you have illustrated here to the Court?

A. Yes, sir.

Q. And that arrived at the same result as the formula Exhibit 8-A furnished you by Mr. Hancock.

A. That is the formula.

PLAINTIFFS' EXHIBIT 8-A is a mimeographed copy from an original exhibit which was prepared for use in the State court case. It is in my handwriting and I prepared the figures.

I prepared a table showing the daily, hourly and monthly rates [305] paid deck hands and firemen

(Testimony of Francis Edward Gorman.)

on the 8 and 16 hour watches and the 12 and 24 hour watches, in accordance with the arbitration award, effective May 1, 1928. This is offered in evidence as DEFENDANTS' EXHIBIT D. and is in words and figures as follows:

DAILY, HOURLY AND MONTHLY RATES PAID DECK-HANDS AND FIREMEN ON 8-16 HR. AND 12-24 HR. WATCHES IN ACCORDANCE WITH ARBITRATION AWARD EFFECTIVE MAY 1st, 1928.

8 hr. Deckhand	—monthly rate (new)	$139.40
" " "	—hourly " "	.6680
" " "	—daily—25 day mo.	$5.5760
" " "	— " —26 day mo.	$5.3615
" " "	— " —27 " "	$5.1629
12 hr. Deckhand	—monthly rate (new)	$139.40
" " "	—hourly " "	.5728
" " "	—daily " 30 days	$4.6466
" " "	— " " 31 days	$4.4257
8 hr. Fireman	—monthly rate (new)	$146.35
" " "	—hourly " "	.7013
" " "	—daily " 25 days	$5.8540
" " "	— " " 26 days	$5.6288
" " "	— " " 27 "	$5.4204
12 hr. Fireman	—monthly rate (new)	$146.35
" " "	—hourly " "	.6014
" " "	—daily " 30 days	$4.8783
" " "	— " " 31 days	$4.6460
12 hr. Watchman	—monthly rate (new)	$120.00
" " "	—hourly " "	.4932
" " "	—daily " 30 days	$4.00
" " "	— " " 31 "	$3.8095

I have also prepared a similar table with respect to deck hands and firemen on the 8 and 16 hour

(Testimony of Francis Edward Gorman.)

and 12 and 24 hour watches in accordance with the 1925 agreement. This is offered and received in evidence and marked Defendants' Exhibit E, and is in words and figures as follows: [306]

DAILY, HOURLY AND MONTHLY RATES PAID DECK-HANDS, AND FIREMEN ON 8-16 HR. AND 12-24 HR. WATCHES IN ACCORDANCE WITH LABOR BOARD DECISION No. 2790 EFFECTIVE JAN'Y 16th, 1925.

8 hr. Deckhand	—monthly rate	$129.40
" " "	hourly "	.6201
" " "	daily—25 day mo.	$5.1760
" " "	" —26 " "	$4.9769
" " "	" —27 " "	$4.7926
12 hr. Deckhand	—monthly rate	$129.40
" " "	hourly "	.5318
" " "	daily—30 day mo.	$4.3133
" " "	" —31½ day mo.	4.1079
8 hr. Fireman	—monthly rate	$136.35
" " "	hourly "	.6534
" " "	daily—25 day mo.	$5.454
" " "	" —26 " "	$5.2442
" " "	" —27 " "	$5.05
12 hr. Fireman	—monthly rate	$136.35
" " "	hourly "	.5603
" " "	daily—30 day mo.	$4.545
" " "	" —31½ day mo.	$4.3286

NOTE: Employes serving 12-24 hr. extra or irregular watches paid as follows—

For 31 day month—daily rate to be arrived at on basis of 1/31st of monthly rate.

For 30 day month—daily rate 1/30th.

Employes on 8-16 hr. watches with no established day off for 30 and 31 day month rate established as 1/26th of monthly rate.

(Testimony of Francis Edward Gorman.)

A printed reproduction of a table showing the case of a fireman who began working at 6:30 A. M. on March 1, 1928, and continued working throughout the month on the 12 and 24 hour basis, and throughout each month thereafter until September 1st, the number of watches worked, the number of hours worked and the adjustment made with him by the pay check dated September 30, 1928, was offered and admitted in evidence as

DEFENDANTS' EXHIBIT F,

and is in words and figures as follows: [307]

SOUTHERN PACIFIC COMPANY

Analysis of Hours and Pay of Two Firemen Beginning Watches, March 1-1928, 6:30 a.m.; "A" on 12-24 Hour Basis and "B", the Other, on 8-16 Hour Basis.

12-24 man "A" No. of 12-hr. watches		Total Hours	8-16 man "B" No. of 8-hr. watches	Total Hours.
March	21	252	27	216
April	20	240	26	208
May	20	240	26	208
June	20	240	26	208
July	21	252	27	216
August	21*	262	26	208
6 months in Suit	123	1476	158	1264

*Last 12-hour watch in Aug. ran into Sept. but paid for as Aug. watch.

DURING THE 6 MONTHS

Each man ("A" and "B") received by semi-monthly pay checks 6 mos. pay at $146.35 (the award rate)...... $878.10

8-16 hr. man's monthly pay—
.7014 per hr. on watch

12-24 hr. man's monthly pay—
.6014 per hr. on watch

BY ADDITIONAL PAY-CHECK DATED

Sept. 30, 1928, the 12-24 hr. man ("A") received...... 157.11

(Arrived at by taking 1476 hrs as
184½ constructive 8-hr. days
x $5.6109 DAILY 8-HR. RATE
— $1035.21 less $878.10 already
paid) $1035.21

(Testimony of Francis Edward Gorman.)

THE 12-24 HOUR "A" MEN HAVE BEEN PAID PRIOR TO SUIT

$1035.21 ÷ 1476 hours = $.7014 per hour or the same rate per hour as the 8-16 "B" men

FORMER "A" EMPLOYEES—ABOVE ILLUSTRATION—NOW SUE FOR

123 watches at 8 hrs. to equal 6 mos. at $146.35 per mo., or	$878.10
and 123 4 hr. overtime periods, or 492 hrs. at $.7014 per hr.	345.09
	$1223.19
Less amount already pd.	1035.21
	$ 187.98

THE AMOUNT THE FORMER "A" MEN NOW SUE FOR PLUS THAT ALREADY PAID EQUALS

$123.19 ÷ 1476 hrs. = $.8287 per hour — as against the 8-16 hr. man — $.7014 or an 18 + % differential in favor of the 12-24 hr. men, thus creating an inequality in favor of the former 12-24 hour "A" men and against the former 8-16 hour "B" men.

[308]

The effect of the additional pay check in the case of the 12 and 24 hour man was to raise the amount he received per hour to exactly the same amount that the 8 and 16 hour man had received by his monthly pay check. This was 70.14 cents per hour.

If each day were treated as a unit, as the men sue for in this case, this would create an earning for them of 82.87 cents per hour as against the earning of the 8 and 16 hour men of 70.14 cents, or a differential of 18 plus per cent in favor of the

(Testimony of Francis Edward Gorman.)
men who worked during that 6 months on the 12 hour shifts. I had nothing to do with the issuance of the pay checks. I merely made the payroll.

In the regular course of business during a month, if a man should be underpaid in his check, he would come to the office, or he would make out one of the regular forms and send it to the office, and we would check his time and if the claim was just we would either let him have a voucher or just put it on his next pay check, to suit his own desire.

This has not been done on any wholesale basis, but in individual cases, where a man claims there has been an underpayment.

PLAINTIFF'S EXHIBIT 13 is shown to the witness. In practice it is used if the employe feels that he is underpaid. When we receive the form we check it and if the claim is just, we allow the man his claim. There is never any hesitation about making that adjustment. He is not necessarily required to fill out one of these forms when he comes to the office. There were cases where I would check it while the man was at the window and if I found it was a just claim, we would adjust it verbally.

I did not issue the check. I would give it to the head timekeeper and he would issue the voucher, if the man made his regular request for a voucher. [309]

In making out the payroll on which the September, 1928, checks were based, I followed in all cases the formula prescribed by Mr. Hancock, De-

(Testimony of Francis Edward Gorman.)
fendants' Exhibit A, and each man's time was figured month by month. That resulted in giving the 12 and 24 hour men, for each hour they worked during that 6 months' period, the same rate of pay that was paid the 8-hour men for each hour they worked during that same period.

On Cross examination
Mr. Gorman testified as follows:

> The purpose of that formula, as I understand it, was to give the men who had worked on 12-hour watches the same daily or hourly rate of pay as the men who had been on 8-hour watches. The man was allowed one and a half 8-hour days for each 12 hour watch, but those hours and days were aggregated or lumped month by month.

If a man worked five 12-hour shifts the first week of the month and five 12-hour shifts the second week of the month, and four 12-hour shifts the third week of the month and five 12-hour shifts the fourth week of the month, we lumped those hours for the month and divided by eight to get an equivalent number of [310] 8-hour days. We would have to lump the hours by the month and divide by 8, in order to get under the formula the equivalent number of 8-hour days.

In the case of Mr. Costa, he worked during the month of March, 1928, 21 watches at 12 hours each,

(Testimony of Francis Edward Gorman.)

or an aggregate of 252 hours for that month. I lumped the 21 watches into 252 hours, divided by 8 and got the equivalent of 31-1/2 days worked that month. I did not use the same formula, but I got the same result.

I lumped by days instead of hours and that lumping process gave an equivalent therefore of 31-1/2 8-hour days. Having by Mr. Hancock's formula arrived at a lump equivalent of 31-1/2 days, the man was paid by giving him the equivalent of 70.14 cents per hour or $5.6109 per day. Under that formula, to figure out what the man should have been paid, you get the same result whether you take the lumped 252 hours and multiply by 70.14 cents, or the equivalent number of 8-hour days, 31-1/2, multiplied by 5.6109. It should figure exactly the same. The formula could be worked out either by lumping the hours per month and multiplying by 70.14 cents, or by lumping the hours and dividing by 8 and getting the equivalent number of 8-hour days and multiplying that by the daily rate. It would be the same except for a fraction of a penny. In figuring what the man should have had during this period, we disregard the day as a unit and the week as a unit, but lump the hours by the month to get at our 31-1/2 days for the month, for a man working his full assignment. In the case of Mr. Costa, to figure what he should have received, we disregard the number of days he worked each month, the number of hours he worked each

(Testimony of Francis Edward Gorman.)

day, the number of hours he worked by the week, but took for the basis of our calculation the lumped hours per month, according to the assignment. [311]

In the case of Mr. Costa you have 252 lumped hours. You divide that by 8 and get the theoretical basis of 31-1/2 eight hour days. He worked 21 twelve hour watches or the equivalent of 31-1/2 eight hour days, if you were to bring it to the 8-hour day basis. In figuring by Mr. Hancock's formula, instead of getting your overtime by the day, we adopted a formula which gave us a theoretical basis of 8-hour days. This would give 31-1/2 eight hour days a month.

We were not attempting to find out under this formula how much overtime each day the man worked. All we were trying to get at was the equivalent number of theoretical 8-hour days he worked during the month, and adjusted it according to the rate of the 8-hour man.

Q. You were not making any attempt at all by your formula to find out how much overtime by the day the man was entitled to?

A. Well, the difference between what he was paid—for instance, a 12-hour day we pay them for 12 hours, or one and a half 8-hour days at the existing 12-hour rate at that time, and for each day the man worked he would be allowed the difference between 8 and 12 hour watch rate. In other individual cases, where some man

(Testimony of Francis Edward Gorman.)

> may have only worked one or two 12-hour watches, and he was allowed—if it was the case of one 12-hour watch that would be one and a half 8-hour days,—he was allowed the difference between the rate paid him on the 12-hour basis and what it would have equaled on the 8-hour basis."

I had nothing to do with the preparation of the formula which Mr. Hancock gave me to work on. That came to us in the regular manner from the general office. My sole purpose was to comply with that formula. I was not concerned at all as to whether or not it complied with the agreement between the parties. I figured my superior officer should know what he is doing, and I must accept his formula. He is the authority in charge. I am just one of the employes. [312]

Q. Now, you spoke a little while ago about the practice of your company in making adjustments on checks during the time you were with the company, and whether or not they filled out this form. Did you ever refuse to make a correction where one of these was presented, stating that the check recites it was in full for that particular period——

A. I had nothing to do with the issuance of checks. If a man came in and told me he was 8 hours short or 12 hours short or whatever the case would be, I would check his claim and if I could find he had been paid in error I would allow the

(Testimony of Francis Edward Gorman.)

adjustment, as I have [313] stated. If he wanted it on a time voucher, he was allowed a time voucher. If he wanted to let it go on his next check we put it on his next check.

Q. It was never the practice to tell the man "We don't care whether you are right or wrong; you cashed the check and you are through"?

A. We can't do that.

Q. You never did at any time while you were with the company?

A. I can't do it. I am not allowed to.

Q. And you don't know of a single instance where it was done?

A. Not to my knowledge, that I can recall.

Here was received in evidence PLAINTIFFS' EXHIBIT No. 14.

FRANCIS EDWARD GORMAN

was recalled for re-direct examination and discussed the case of a fireman working only one 12-hour watch in any one month.

For instance, Conrad Anderson, No. 2, in the month of August for the 12-hour watch he worked received $6.97. That was paid him on the basis of one and one-half 8-hour days at $4.646 and a fraction—he was given one and a half days, which would be the equivalent of $6.97. When we made the adjustment he was given one and a half days at the

(Testimony of Francis Edward Gorman.)

8-hour rate, $8.41, which would be one and one-half days at the 8-hour rate, and what he received was subtracted from it, or he received a differential of $1.44.

In response to a question from the Court the witness replied that it was for 12 hours work and that he actually worked 12 hours. When he originally worked the 12 hours, the 12-hour watch, he was paid $6.97, which was one and a half times the 12-hour rate.

When it was re-adjusted he was paid $8.41 which was one and a half times the 8-hour rate. If he had worked 8 hours he would have received $5.61. Then he worked four hours additional. When the adjustment was made he received the equivalent of $8.41.

If a man worked for 8 hours under the 8-hour basis he would [314] receive $5.61. For the 4 hours additional he should get approximately $2.80.

Q. Well, suppose that he only worked one day, what would you pay him?

A. Before the adjustment or afterwards?

Q. After the adjustment.

A. $8.41.

Q. And if he worked other days in that month that amount would be lessened for that day. Is that so?

A. No, he would receive an adjustment to equal the $8.41.

(Testimony of Francis Edward Gorman.)

THE COURT: I don't understand that adjustment. I don't understand how you arrive at it all. I can not see it.

By this adjustment he got all together exactly what the 8-hour man got had he worked 8 hours straight time and 4 hours overtime.

THE COURT: Maybe after I think about it a while I will see it. If has been difficult for me to see the method of computing the amount these men received for overtime, the amount they should be paid for overtime. When a man works 12 hours a day and 4 of it is overtime, I would say he would be entitled to overtime on the basis of four times 7014 and that would be $2.80 per day for overtime.

THE COURT: Q. You say he actually receives—

A. $8.41 in the adjustment.

Q. For every day that he works?

A. For every 12 hour day?

Q. Yes.

A. Yes, sir. The adjustment took care of that when the back pay was figured.

Q. And he would receive that $8.41 if he worked a single day, but what would he have received if he worked 30 days a month for every day's work?

A. Every 12-hour watch he would receive $8.41.

Mr. BOOTH: Q. You are speaking now of a fireman? [315]

A. Of a fireman.

Q. And you are applying the ten dollar increase that was given by the Board of Arbitration? That

(Testimony of Francis Edward Gorman.)

is included. That is the $146.35 rate that shows on the board (referring to figures on the courtroom blackboard).

Q. And the fireman's rate on this basis, on the basis of this award by the Board of Arbitration, which increased the then salary by ten dollars a month, amounted to 70.14 cents per hour?

A. Correct.

Q. And when this man that you mentioned, No. 2 on Exhibit 8-A, worked only 12 hours that month, he received prior to the adjustment $6.97 in his regular pay check, regular monthly pay check?

A. He did.

Q. And then when you came to adjust it you paid him an additional $1.44 which brought his total earnings for that day up to $8.41?

A. That is correct.

Q. Which is 12 times 70.14 cents.

A. That is correct.

Q. And was exactly the same as though he had been an 8-hour man and had worked 8 hours and 4 hours overtime?

A. That is correct.

On Re-cross examination

the witness testified that Conrad Anderson was paid one twenty-first of the monthly rate for the one assignment he worked or $6.97.

Four hours overtime is approximately $2.80. This added to $6.97 makes $9.77. Mr. Anderson was not

(Testimony of Francis Edward Gorman.)
paid $9.77 but $8.41, making a difference of $1.36 between the method followed by the company and that contended for by the men.

Mr. BOOTH: If the Court please, with regard to the Northwestern Pacific, counsel has accepted as Exhibit 8-B, a copy of the table which was attached to the Northwestern Pacific answer in the state case. The formula followed was exactly the same and if [316] counsel will stipulate to that I won't put on any evidence in regard to the Northwestern Pacific.

Mr. SHARP: If counsel tells me that it is true, I will accept his statement and stipulate to it.

CLYDE W. DEAL

was recalled as a witness on behalf of plaintiffs.

In the case of the company, in order to arrive at certain conclusions they have denied first the existence of an 8-hour day, and, second, created a theoretical 8-hour day.

The fact that they denied the existence of the 8-hour day is easily seen, because all hours worked in excess of the 8-hour day, under the rule, must be repaid for as overtime. The fact that they tried to hold on—they created the theoretical 8-hour day, is easily proven because they take overtime and transmute it into theoretical 8-hour days. That is,

(Testimony of Clyde W. Deal.)
they take the time in excess of 8 hours on the 12-hour watches, lump it to make 8-hour days out of it.

This trouble started as a result of the award handed down October 31st. There was an agreement to arbitrate specific questions. The specific question was, Should the 8-hour watch and the 12-hour watch continue in the rules, or shall the 12-hour watch be stricken from the rules? That was the specific question before the Arbitration Board; and for 122 days, 4,000 pages of transcript, that question, along with the other two questions, was considered by the Board, headed by Dr. Marks of Stanford University. The Board says that the 12-hour watch is abolished as of November 1, 1927, because we had agreed, that is, the Southern Pacific Company and the other companies concerned, and the Union, that the first of the month following the date of the award the new hour rule, if there was any, that is, the award would be effective as far as the hours [317] were concerned. However, instead of putting the award into effect the company went to your court and applied—and, incidentally, if I may be pardoned for going back just a moment—during the deliberations of the Arbitration Board, in spite of the fact that there was only three questions involved—

In spite of the fact that there was only three questions before the Board, and one of the principal questions is our question, Shall the 12-hour watch remain or shall it be abolished?—and in spite of the

(Testimony of Clyde W. Deal.)

fact that we had agreed, that is, the company and the Union, that the question before the Board would be limited, in the agreement, the company attempted and did introduce other questions, setting up and pleading for split watches and 9 and 10 hour watches and other combinations that were not proper before the Board at all. The board considered all the questions, so it said in the award, all matters presented to it, and handed down its opinion and decision. Then on a technicality that the Board had not considered everything, it was alleged by the attorneys for the company that the Board had not considered everything presented to it properly, and the company went to the courts, your court by the way, first, I believe and attempted to impeach the award. Then as the records plainly show, finally the award was sustained by the Circuit Court, but before that happened, while it was still being considered on appeal, there was several conferences, to which Mr. Hancock referred in regard to this matter and in regard to other matters not relating to us at all, but we were all in the conference with Mr. Hancock and other representatives of the carriers, and finally—I don't want to burden the record, your Honor, but I would like to tell this story — and finally we felt — when I say "we" I mean the men that I represent — that we were in a position — we had carried on a sustained fight for a long time — that we had to trade for the proposal that was

(Testimony of Clyde W. Deal.)

finally made, and we had to [318] trade for 4 months of the effect of that award to the 12-hour men in exchange for the ten dollar increase being put into effect and being withdrawn from the court. In other words, the hours were supposed to go into effect November 1st, and finally by agreement swapping something we were entitled to by the award and entitled to by the agreement with the companies for something else that we had by the award, that is, the ten dollar increase per month. We advanced the effective date from November 1st to March 1st, of the hour rule. That was done; whether right or wrong, we did it. That amounted to $50,000 to our members.

During the discussion of that I remember quite well that I pointed out to Mr. Hancock and others the accumulating overtime that was continuing to accumulate, and during that discussion I think is the time Mr. Hancock got the impression that we were going to take our position that all time in excess of 8 hours was overtime and should be paid as overtime. The entire purpose was to get the matter out of court, so far as I was concerned, and to get the award into effect.

In May the agreement was arrived at advancing the effective date to March 1st from November 1st. Finally, I believe it was in August or the first part of September, a decision was handed down by the Circuit Court and by the judges of this court. At

(Testimony of Clyde W. Deal.)

that time we were not consulted, even though we had been consulted many times previously in methods of how to figure out changed rules and so on. But this method was devised and put into effect without consulting the organization or without consulting the attorneys.

In so far as the statement that was made that the additional wording was placed on the check by the company in order to defeat our purpose, I wish to state that there was nothing placed on those checks other than has been placed on checks many times in similar circumstances. For instance, in 1919 there was back pay [319] due our members, from January 1st for about 5 or 6 months, and those back pay checks had notations on them somewhat similar—maybe not just exactly like that, because it was a different Board and a different set-up, but they had notations on them of additional compensation. In 1917, I believe, also back pay checks were paid and notations were made on them. In fact, it is the custom where there has been arbitrations handed down, or there has been retroactive pay paid, that notations will be made on them showing what it is for. That is a railroad custom, as long as I have known anything about it, and I am sure Mr. Hancock did not mean it, or he just forgot for the moment and he inferred that this was a particular statement put on that check in an effort to defeat anything we thought we were legitimately entitled to.

(Testimony of Clyde W. Deal.)

The method of computing the check as employed by the company, so far as the arithmetic is concerned, is undoubtedly correct, but the confusing part of it is that it is based on a false premise. As I have said, from the beginning, there was only one question in regard to hours, Shall the 12-hour watch remain in the rules or should it be abolished? And as of March 1st it was abolished. That was the second time we had agreed it should be abolished, first on November 1st, according to the arbitration and according to the agreement setting up the Arbitration Board, and March 1st we agreed it was effective, the award was effective, and the 12-hour watch no longer existed. If the 12-hour watch did not exist then there was only one watch and that was the 8-hour watch.

Now, in order to avoid the payment of overtime, from 8 to 12, they say, in effect, that there is no 8-hour watch. Then, in order to carry out the vice they set up a theoretical 8-hour watch.

The 6 day week is referred to as contingent upon the payment [320] of overtime. The overtime rule then in effect was, overtime shall be computed on the actual minute basis. Even hours will be paid for at the end of each pay period; fractions thereof will be carried forward. That was for computing overtime, all time in excess of the regular assigned hours. After March 1st there were no regular assigned hours except the 8 hours.

(Testimony of Clyde W. Deal.)

Rule 11 is computing overtime. The purpose of the difficulty between the men, the representatives of the Union and the company, was to abolish the 12-hour watch—was the 12-hour watch, rather, and for many years the men working 12-hour watches had been paid a less rate than the 8-hour men. However, that fact was not the real fact before the Arbitration Board, but the fact, the question before the Board was the abolishment of it, the 12-hour watch.

The method of computing time, as shown on the blackboard, I must confess, is new to me, though I thought I knew all the methods there were in computing time.

The statement is made that the overtime rate was the same as the straight time rate. Still, following this method here, your 30-day month, 31-day month, we get a different rate for 8 hours per hour, and that is easily noticeable. I think there was one shown this morning of $4.84 or $4.85 for 8 hours, and this other one of 4.64. There is only one overtime rate, sir, and that is 70.14 cents per hour. And any statement that this method can be employed and the same rate paid at the same time is in error, for overtime. My statement that that is the only way of doing it is based on rule 8 of the agreement pertaining to overtime which provides that the monthly salary now paid the employes covered by this agreement, shall cover the present recognized straight

(Testimony of Clyde W. Deal.)
time assignments. All service hourage in excess of the present recognized straight time assignment shall be paid for in addition to the [321] monthly salary at the pro rata rate.

There was only one "present recognized straight time assignment" on and after March 1, 1928, and that was the 8-hours.

Fixing overtime rate. Rule 9. To compute the hourly overtime rate divide twelve times the monthly salary by the present recognized straight time annual assignment. Then, on 8 and 16 hour watches, divide 12 times the monthly salary by 2504; and on and after March 1st there was only the 8 and 16 hour watches. 2504 into 12 times 146.35 gives you 70.14 cents per hour. That is one thing that has been done correctly. That is, they have arrived at that rate correctly. However, they failed to use it properly. The balance of the rule, which refers to the 12 and 24 hour watches, was abolished as of March 1, 1928.

It is difficult for anyone that has been living with this so long to argue or to try to give evidence to explain a thing that is so obvious, to me.

I say it is difficult to try to argue the merits of a method of computing time, or to try and argue the method against a method that is based on something that does not exist. And that is the whole fallacy, for the regular straight assignments as of March 1st was supposed to be 8 hours. The company

(Testimony of Clyde W. Deal.)

did not assign them, I assume on the assumption that they might be eventually upheld by the Circuit Court of Appeals and defeat the purpose of the award that had been filed in the courts.

However, on and after March 1st, there was only one condition that was supposed to be in effect. The fact that the men were not assigned to 8-hour watches was not our fault. The men worked every watch that they were assigned to and they were paid a monthly wage, not a daily and hourly wage, it was a monthly, fixed monthly rate of pay. There was one rate for overtime. The [322] failure of the company to assign them was for the purpose of the company, not for any other purpose than the hope maybe that they would finally defeat the award in the courts. They failed, they lost the fight, they were ordered to put the award into effect, and then this device is for the purpose of defeating the attempts of the men to collect the overtime after 8 hours, in the form of overtime, by changing it into theoretical 8-hour days.

In making those computations Mr. Gorman referred to parts of the rule or the agreement which were no longer in effect as of March 1, 1928.

First was section (a) of Rule 6, which was the 12-hour watch, which was specifically abolished. Then section (b) of Rule 9, which relates to the fixing of the overtime rate, and says that on 12 and 24 hour watches divide 12 times the monthly salary by 2920.

(Testimony of Clyde W. Deal.)

Now, 2920 is eight times 365. He may or may not have relied on that. Of course, Mr. Gorman relied on the formula and the formula was based upon the theory that they could take a 12-hour watch and make 8-hour days out of it, which the rule does not permit. It is true, however, that in a statement of this agreement, at one time, we agreed with the company that for every 12-hour watch they would pay 1 and a half days' pay. Now, we had to do that at one time. That was in 1926. The agreement was dated May 1, 1926. It was in effect, I think, until the 12-hour rule was struck out.

The purpose of that was made necessary on our part because of a practice that originated prior to that time on alleged 12-hour watches, or so-called 12-hour watches, of paying 8 hours or a day for the first 8 hours, and the balance of it in the form of overtime. The company did that for quite a number of years. For instance on a certain route the men would be assigned to 11 hours and 45 minutes or 11 hours and 15 minutes on one watch and 12 hours [323] and 15 minutes or 12 hours and 45 minutes on the other watch. The theory was that they were supposed to equalize in the revolving 12 on and 24 off. But in actual practice it did not always equalize, and certain men were only able to get a monthly salary because the company computed it as eight hours, one day, and $3.45, $3.30 or

(Testimony of Clyde W. Deal.)
$3.15 overtime. They did that for quite some time until we in 1926 arrived at this agreement and understanding. They got their month's wage in theory, so the company said, for the first 8 hours. The balance of it was overtime but they did not get any more than their monthly wage.

I participated in the argument made before the Arbitration Board and know the points urged by the Union in support of the contention that the 12 hour watches should be abolished.

The main contention we made was that the 12-hour watch was a relic, an antique, that it should be as a matter of principle retired to the garret. But we supported that, of course, with the argument that it was a danger to life and property, to the men on watch for 12 hours, where you have three or four thousand passengers quite often on a vessel, and the potential danger there of keeping men on such long watches, also the hardship caused as a result of working long hours. In principle, those were the main arguments that were used.

When the company issued checks in the form, a sample of which is before the court, many of the men took up with me the question of cashing the checks.

Q. And what did you do or say to them?

A. I told them to cash them, because——

Mr. BOOTH: We object to that as not binding upon the defendants here, not having

(Testimony of Clyde W. Deal.)

been stated to them. We raised the defense of the checks being tendered in full paymnt of this account, and they have been acknowledged on the back in full payment of account. Now, I think it is obvious, under the decisions, what Mr. Deal, manager of the Union, said to his men in regard to the men cashing them, that was not communicated to us. I object to this on the ground [324] that it is incompetent, irrelevant and immaterial.

Mr. SHARP: I want to show the exact situation. There was some point made by Mr. Booth, why they happen to use these forms, and I want to bring out by this witness, if I may, that after taking it up with me he was advised that was not necessary, that he could proceed and tell the men to cash them and let the attorneys take up any controversy afterwards and explain the full situation. [325]

Mr. BOOTH: We object to the relevancy of the statement of counsel. Counsel introduced these forms and I asked him if any of these forms were ever presented to the company and he said "No".

The COURT: Objection sustained.

I have been representing the union for 16 years. I am the executive officer of the Union. I handle the claims of the men against the company where there is any claim that checks have not been issued for the full amount. I think I have handled several hundred of such claims in the last 16 years.

(Testimony of Clyde W. Deal.)

I have taken up claims with the Southern Pacific Company possibly first with Captain Heath and then with Mr. Hancock. There is a certain method of handling all those cases. I am familiar with the form of check that has been in use by the Southern Pacific during this period.

To the best of my knowledge the statement on the back of the check, Defendants' Exhibit B, "This voucher is endorsed as an acknowledgment of receipt of payment in full of account as stated within" has been there for the last 16 years. It was on the back of the checks regarding which I handled claims.

Mr. SHARP: Now in any of those cases was objection made to the treatment of the claim on the ground that the check was endorsed in full?

Mr. BOOTH: If the Court please, I want to interpose an objection here. Probably it will be argued later. But I object to any evidence as to the custom or practice of the company waiving the benefit of any release on the back of these checks, as irrelevant and immaterial. The fact that a man makes a practice of waiving the statute of limitations in cases, sometimes because it is a matter of good business judgment or comity or good salesmanship, is no bar to his setting up the statute of limitations when it is properly pleaded, and when it is relied on by him and not waived. It is not a question of [326] estoppel in pais; this is a

(Testimony of Clyde W. Deal.)

question of special checks and checks in a special form being issued, and the parties signing them and cashing them, and I think we are entitled to rely on this even though we may have waived that in the past as to other checks and other forms of payment.

Mr. SHARP: If the Court please, our contention in this regard would be that over a period of 16 years this identical form of alleged receipt in full has been used; that the men have for years come to rely on the fact that they can cash their check and get their bread and butter each payday without having to hold the checks up while the lawyers and accounting departments decide on the question of whether or not that is a receipt for payment in full. That has been the uniform procedure; they cashed their pay checks, paid their bills, and live on it, and if there are any discrepancies it is straightened out thereafter. That has been the practice that has continued in years past, and the men took the checks and cashed them, because they knew if there was any discrepancy it could be straightened out afterwards with the company.

The COURT: Isn't there evidence in the record already as to that condition obtaining, Mr. Booth? I think some evidence went in without objection.

Mr. BOOTH: Yes, there is evidence that where time has been omitted from the paycheck this form

(Testimony of Clyde W. Deal.)

was used and the mistake was rectified. But I do not think that precludes the company from raising the defense, and I think it is not relevant to any claim that the defense has been waived in a wholesale case such as this, where the company puts a special endorsement on the checks and issues them in the face of a prior claim that more money is or may be due and the checks are cashed. We have a peculiar situation which I think is not disposed of by prior practice. I was perfectly willing to admit what the prior practice is. If a mistake is made in a pay check of [327] any man in the Southern Pacific Company, if he is not credited with enough miles or enough hours, or if a watch is omitted, why, it is always corrected.

The COURT: No matter what the endorsement is.

Mr. BOOTH: No matter what the endorsement is on the back of the check. But here is a special situation, and the check is issued in anticipation, as Mr. Hancock testifies to. Now we shall contend on the argument that that can not impair it to any extent by practice in the ordinary course of business. I think any public service corporation, or any other employer, would be, and justly, subject to very severe criticism if it relied on the endorsement of a check, no matter what the language was, if they attempted to preclude a man from opening the account and showing he had not been paid in full.

(Testimony of Clyde W. Deal.)

The COURT: The language here referred to is written on the face of the check?

Mr. BOOTH: Yes.

Mr. SHARP: There is no language on the face of the check which purports to be in full settlement. The language on the face of the check is "For additional compensation account".

Mr. BOOTH: It says "For additional compensation on account of this award". "For additional compensation account of Arbitration Award between Southern Pacific Company and Ferryboatmen's Union, October 31, 1927, from March to August, 1928, inclusive."

Mr. SHARP: That is the only new language used.

Mr. BOOTH: And on the back of the check was the endorsement "This voucher is endorsed as an acknowledgment of receipt of payment in full of account as stated within".

The COURT: Now, Mr. Sharp, you are seeking to show by this witness what?

Mr. SHARP: I am seeking to show by this witness that as a matter of [328] fact, for many years, regardless of that statement on the back of the check, that the check was in full of account, it has been the uniform practice to permit the men to come in and get adjustments afterwards.

The COURT: As I understand it, that is already in evidence before the Court, and Mr. Booth stated that that is the fact.

(Testimony of Clyde W. Deal.)

Mr. SHARP: Then what is the objection to the question? I want to go on from that and show it has applied to not only a single case, but wholesale cases.

The COURT: You want to show it applies particularly to this check?

Mr. SHARP: I want to show also with respect to these particular checks, that no objection was made at that time because upon legal advice, in view of this past practice, I informed them to go ahead and cash the checks. I want to bring that evidence before the Court.

Mr. BOOTH: We object to it as incompetent, irrelevant and immaterial and not communicated to the defendants.

The COURT: Sustained.

Mr. SHARP: Exception.

During the various occasions on which I presented on behalf of the members of the Union claims for corrections in checks. there was never any objection made on the ground that we had not used the particular form in evidence here as plaintiffs' Exhibit 14. In other words, adjustments were made whether we used the form or not, contingent on being able to convince the company that there were mistakes made.

Q. Did you hear this part of Mr. Hancock's testimony yesterday: "Well, then disregarding any case covered by special agreement and disregarding

(Testimony of Clyde W. Deal.)

cases covered by the exceptions to the rules, it has been the uniform rule and practice since 1918 to date that where a man is assigned on an 8-hour watch but, as a matter of fact, on any particular day he works in excess of 8 hours, he is entitled to [329] overtime for that excess at a prorate basis.

Mr. BOOTH: That is the regular assignment?

Mr. SHARP: Yes.

The WITNESS: Eight regular assigned watches?

Mr. BOOTH: Yes.

The WITNESS: Yes. That would be correct.

Mr. SHARP: Q. What has been the uniform rule and practice from 1918 to date?

A. Well, that was established in Recommendation 82. If a man's regular assigned hours was 8 hours and he worked in excess of that, unless it was provided for in an agreement he would receive overtime.

Q. At a prorate basis?

A. At at a prorate, yes.

Q. And that was since 1918 you say?

A. I beg pardon?

Q. The year that started was 1918?

A. 1918".

Did you hear the testimony?

A. I did.

Q. Do you disagree with Mr. Hancock's interpretation as to what overtime consists of under the agreement?

(Testimony of Clyde W. Deal.)

A. I agree with his testimony there that all time in excess of 8 hours is overtime and should be paid for as such.

Q. Has the contention ever been made by the Union or by you with respect to overtime other than that set forth by Mr. Hancock?

A. There has not.

Q. So there has been during this entire period complete agreement between the Union and the company as to what constitutes overtime. Has there ever been, since 1918, any difference between the Union and the company as to the meaning of overtime?

A. Not to my knowledge.

Q. Or of the rules requiring overtime—

A. There have been differences as to how much should be paid. But what constituted overtime, there has been no difference.

Q. And there has been since 1918, therefore, complete agreement between the Union and the company that overtime meant just [330] exactly what Mr. Hancock testified yesterday was overtime?

A. That is correct.

On Cross-examination,

Mr. Deal testified as follows:

Leaving out the question of overtime entirely this 12-hour man would receive the same monthly salary for 21 eight-hour days as the 8 and 16 hour man would receive for 26 or 27 eight-hour days.

(Testimony of Clyde W. Deal.)

The effect of our claim is to give the men a month's wages for the assigned hours made by the company. It would pay them for overtime, the regular overtime rate for all time in excess of 8 hours.

70.14 is the overtime rate per hour. The only time it is used is in computing overtime. That rate was derived solely for the purpose of overtime.

There might be quite a bit of difference between the man getting 8 hours straight time and 4 hours overtime on the basis of 70.14 cents per hour than a man getting 12 hours' time on the same basis.

There is a man subject to the assignment of the company, they assign him to 12-hour watches throughout the month, for which he gets his regular monthly wage. By agreement and court order he was put on eight hours as of March 1st and the judgment says all time [331] in excess of 8 hours is overtime. There isn't any rule in the award or in the agreement after March 1st that can justify you in figuring time by this method.

I take the position in this case that because of the failure of the company to put into effect the award on November 1st, and if there is any inequalities or any trouble following it is not our fault, and if you did not see fit to assign the man they were on monthly wage. You assigned them so many watches per month for which they were paid the monthly wage. Now, all time over 8 hours was overtime. That is all there is to it.

(Testimony of Clyde W. Deal.)

The award changed the overtime rule by eliminating the 12-hour watch.

The point is Rule 8 is the only present recognized straight time assignment and that was eight hours. There was no 12-hour assignment. 12 hours was not regularly recognized as a straight time assignment after March 1st.

We are contending that you assigned these men to 12-hour watches. They are entitled to their monthly wage for their regular assignments, and we are contending that all time in excess of 8 hours was overtime.

In practically all cases the men who had 12-hour watches had bid for them. When November 1st came the company should have changed its whole system to the 8-hour basis.

The 12 and 24 hour boats kept running until about September 1st. The company assigned the watches. The men either had to work on them or not work. There were no 12-hour watches after March 1st. Our position is that for each 12 hour period worked after March 1st that 8 hours should be treated as one day's work and that for those assignments he should be paid a monthly salary. He should be paid a monthly salary for 20 eight-hour watches when the 8 and 16 hour men were working 26 eight-hour days. [332]

Monday, September 24, 1934.

Mr. BOOTH: We ask counsel to stipulate that the term "broken assignment" as used in the note to Rule 2 of the contract of 1925, plaintiff's Exhibit Number 2, means a case where an employe on a regularly assigned crew, as defined in Paragraph (a) and/or (b), of Rule 6 of that agreement, failed to work continuously throughout the calendar month on the entire series of watches which were included in the regular monthly assignment of watches for that month for the regular assigned crew of which he was a member.

Mr. SHARP: Now, may I add at that point; Counsel's statement is correct, with two limitations. The term "broken assignment" covers the situation where a man did not work all of the assignments which the company assigned him to. Now, the reason I make that limitation is, I do not want counsel to argue afterwards that the situation here involved, where the men worked all the assignments the company actually assigned them to, is a situation of broken assignments. Our contention in that regard is, if the company assigned the men to work on 20 or 21 watches a month, that was a full assignment and not a broken assignment, but with that limitation, which is that where a man fails to work voluntarily, or fails to work less than the full number of watches assigned by the company, that is designated in the agreement as "broken assignments".

The second limitation which I want to make with respect to that is this: It is self-evident, but I want

to be sure there is no misunderstanding. The term "broken assignment" as stated in counsel's requested stipulation, refers to Rule 6 (a) and/or Rule 6 (b). Of course, it is the contention of the Union that as of March 1, 1927, there was not any "(b)" part to the rule at all, and that the only rule in existence as of that date is the one calling for eight-hour watches. So we do not want to be deemed to be [333] stipulating that a man working on a twelve-hour watch came within the rule, because there was no such rule. But I think that gives counsel what he asks for.

F. E. GORMAN

recalled as a witness for the defendants testified as follows:

I have all the payrolls of the Steamer Division from the latter part of 1923 to the latter part of 1930. They include the men who have been made the subject of the testimony in this case.

Mr. BOOTH: Mr. Sharp, I find there is no proof in here, either by you or by us, that the Northwestern Pacific contract was the same, or substantially the same, as the Southern Pacific contract. A copy of that Northwestern Pacific contract was attached to the Northwestern Pacific answers, and I would like to ask for a stipulation, subject to correction, that the copy set forth in the answer is correct.

(Testimony of F. E. Gorman.)

Mr. SHARP: I am satisfied, if you state that is a correct copy itself. Mr. Deal tells me, however, that he is not sure whether there were any supplementary agreements with respect to the Northwestern Pacific, as there was in connection with the Southern Pacific.

Mr. Gorman went on to testify as to broken assignments.

Mr. BOOTH: Q. Mr. Gorman, when a man on an 8 and 16 hour watch or a 12 and 24 hour watch, worked on any one or more watches less than the full number of assigned watches for that month, it has been stipulated here that that is regarded as a broken assignment. Is that the manner in which the payrolls were prepared?

A. Yes, sir, on the broken assignment basis.

Q. Now, when a man worked on all the assigned watches during the month, but on one or more watches he voluntarily worked less than the 8 or 12 hours prescribed for that watch, was that regarded as [334] a broken assignment? I do not refer to a case where the company itself laid up a boat short of the full eight hours.

A. If he did not fulfill his full series, why, it was a broken assignment.

Q. Suppose on a 21-watch assignment, a man worked twenty full twelve hour watches, and one watch, voluntarily, of ten hours, was that regarded as a broken assignment?

A. Yes, sir.

(Testimony of F. E. Gorman.)

Q. Were the payrolls made up on that basis?

A. Yes, sir.

Q. In the case of a broken assignment where less than the full number of watches were worked, was the man paid by the day?

A. Yes, sir.

Q. The agreement of 1925 provides, in Rule 2, for a method of ascertaining the daily pay. Now, was that, in practice, modified by an interpretation issued by Mr. Hancock on May 1st, 1926?

A. Yes; that was modified by Mr. Hancock's interpretation.

Mr. BOOTH: I have here a copy of that memorandum, which is initialed as I understand it, by Mr. Deal, and I would like to put it in. It is our file copy. I would like to have it copied in the record. It is very long, and I do not think it is necessary to read it in full at this time.

Mr. SHARP: I would like to have it in as an exhibit, instead of putting it in the record.

Mr. BOOTH: It has Mr. Deal's initials on it.

Mr. SHARP: Mr. Deal tells me he did initial a copy.

Mr. BOOTH: Q. Under this interpretation of May 1st, 1926, when an 8-hour man worked a broken assignment, how did you arrive at the daily rate of pay?

A. We took the number of days his crew would work in the month and divide that into his monthly

(Testimony of F. E. Gorman.)

salary and establish a daily rate of pay for an eight hour day. [335]

Q. When a man on a 12-hour assigned watch worked less than the required number of watches, under this interpretation, how did you arrive at his daily rate of pay?

A. If he was on a 21-watch assignment, we would divide 31-1/2 into the monthly rate and would then obtain an eight-hour rate of pay and we would pay him 1½ days at the 8-hour rate of pay.

Q. At the 8-hour rate of pay on the 12-hour basis.

A. Twelve hour basis, yes.

Q. And if he worked on a 20-watch assignment, was the same method followed?

A. The same method; only we would use 30 as the divisor.

Q. Was this memorandum of May 1, 1926, modified subsequently to change the divisor in the case of any of these 12-hour men, and, if so, how?

A. Yes. The memorandum of May 1st shows that in the case of a 21-watch assignment, you would use a divisor of 1/31st, and on the memorandum of May 25th it corrected that so you would use a divisor of 1/31 and 1/2.

Q. Was that the method that was subsequently followed in making up the payrolls?

A. Yes, sir.

Q. You spoke in your former testimony of men coming in to complain about not being paid enough.

(Testimony of F. E. Gorman.)

Were there ever any complaints, as far as you know, of this method of making up payrolls?

A. None that I can recall. Of course, occasionally, why, a man may come in and state he thought he had been underpaid. We would check with him and if he had been underpaid through some error in our figures, why, we would correct accordingly.

Said interpretation or memorandum was introduced in evidence as Defendants' Exhibit H and is in words and figures as follows: [336]

DEFENDANT'S EXHIBIT H

Memorandum of May 1st, 1926

With Examples "A", "B", "C" and "D"

MEMORANDUM of interpretations covering methods, under varying conditions, of compensating Marine Firemen, Deckhands, Cabin Watchmen and others coming under current Agreement covering employes represented by the Ferryboatmen's Union of California.

---

1. Q. Considering the language—

"The monthly salary now paid the employes covered by this Agreement, shall cover the present recognized straight time assignment"

what will constitute the fulfillment of such a straight time assignment?

A. To fulfill such an assignment an employe will serve a series of "8 & 16" hour watches, or a

(Testimony of F. E. Gorman.)
series of "12 & 24" hour watches, under conditions as prescribed in the rules continuously throughout the calendar month.

2. Q. How will an employe be paid who during the calendar month changes, or is changed from a—"8 & 16" hour watch to another "8 & 16" hour watch, "12 & 24" hour watch to another "12 & 24" hour watch, "8 & 16" hour watch to a "12 & 24" hour watch "12 & 24" hour watch to a "8 & 16" hour watch, or makes more than one change during month?

A. Should be paid in accordance with the principles enunciated in Examples "A", "B", "C" or "D", according to circumstances.

3. Q. Where a fireman or deckhand, holding regular assignment as such, serves a part of the month as a licensed deck or engineroom officer, how should he be paid?

A. For services rendered as fireman or deckhand, he should be paid in accordance with Examples "A", "B", "C" or "D".

4. Q. Do the rules provide for the employes involved receiving pay for time off duty?

A. No.

5. Q. How will an employe who works regular "8 & 16" hour watch assignment (with seventh day off without pay) throughout the month, be compensated for extra service, where he works, say [337] two of his regular days off, during the month?

(Testimony of F. E. Gorman.)

A. For such extra service, he should be allowed additional compensation, on daily basis, arrived at in accordance with the provisions of Examples "A", "B", "C" or "D", according to circumstances.

6. Q. How will employes' pay be computed and carried on payrolls for first half of the month?

A. On basis established in Examples "A" to "D" subject to adjustments, in connection with the last half, where employe fulfills straight time assignment.

7. Q. (a) If an employe works a portion of his watch and it becomes necessary to relieve him account of sickness or other causes, how should he be paid for time worked?

A. He should be paid for actual time worked, in accordance with Examples "A" to "D".

(b) How should the relief man be paid (assuming relief man had performed no initial service)?

A. For actual time worked, but with a minimum of four (4) hours.

8. Q. (a) If regular employe is held on duty beyond the hours of his assigned watch, because employe in succeeding watch that is to relieve him is late reporting for duty, who will he be paid?

A. On overtime basis.

(b) How will the tardy (regular) employe be paid?

A. For actual time worked

(c) How will an extra employe (who has performed no initial service) be paid, where used to

(Testimony of F. E. Gorman.)

relieve the regular employe who has worked over into the succeeding watch, because of failure of (regular) employe on such watch to report for duty.

A. For actual time worked, with minimum of four (4) hours

(d) Under rule reading—

> "When notified or called to work outside of established hours, after having been released from duty, employe will be paid a minimum of four (4) hours.

how will service rendered after the expiration of the four hours be paid for?

A. On actual minute basis.

9. Q. What overtime rate, or rates, will be used in connection with the various daily rates as arrived at under Examples "A" to "D" inclusive? [338]

A. Overtime will be paid for on basis of rates arrived at under formulas prescribed by Rule 9 of the Agreement.

10. Q. Are the daily wage rates as shown in Examples "A", "B", and "C" subject to change?

A. Yes, they will be subject to change from time to time, in accordance with decisions of the United States Railroad Labor Board or other tribunal, or by local agreement.

San Francisco, Cal.

May 1, 1926. [339]

EXAMPLE "A"

SHOWING METHOD OF COMPENSATING EMPLOYES WORKING BROKEN ASSIGNMENTS, DURING 31 DAY MONTH, USING MONTH OF MAY, 1926, TO ILLUSTRATE, FOR DECKHAND.

		Watch	Worked	Time	
SAT.	1st	12 & 24	7AM x to x 7PM	1½ days	at $4.1742 or 1/31st.
	2nd	"	7PM x \	1½ "	
	3rd		\ x 7AM		Time allowance
	4th	"	7AM x to x 7PM	1½ "	is credited to
	5th	"	7PM x \	1½ "	the day on which
	6th		\ x 7AM		the watch starts.
	7th	"	7AM x to x 7PM	1½ "	
SAT.	8th	"	7AM x \	1½ "	
	9th		\ x 7AM		
	10th	"	7AM x to x 7PM	1½ "	Total of 12 days
	11th	"	7PM x \	1½ "	at $4.1742
	12th		\ x 7AM	....	....
	13th	8 & 16	6PM x \	1 "	at $4.9769 or 1/26th
	14th	"	6PM x \ \ x 2AM	1 "	Account Saturday
SAT.	15th	"	DAY OFF \ x 2AM		being the "DAY
	16th	"	6PM x \		OFF"
			\ x 2AM	1 "	on the position, and
	17th	"	6PM x \	1 "	there being 5 Satur-
			\ x 2AM		
	18th	"	6PM x \	1 "	days in the month,
			\ x 2AM		
	19th	"	6PM x \	1 "	leaving 26 working
			\ x 2AM		days
	20th	"	6PM x \	1	
			\ x 2AM		
	21st	"	6PM x \	1 "	Had the "Day Off"
			\ x 2AM		fallen on Tuesday

(Testimony of F. E. Gorman.)

		Watch	Worked		Time		
SAT.	22nd	8 & 16	DAY OFF				
	23rd	”	6PM x \		1		of which there was
				\ x 2AM			4 in the month,
	24th	”	6PM x \		1		
				\ x 2AM			leaving 27 working
	25th	”	6PM x \		1		days, the rate
				\ x 2AM			would have been
	26th	”	6PM x \		1		
				\ x 2AM			$4.7926 or 1/26th
	27th	”	6PM x \		1		
				\ x 2AM			of the monthly wage.
							[340]
	28th	”	6PM x \		1		
				\ x 2AM			
SAT.	29th	”	DAY OFF				
	30th	”	6PM x \		1	”	Total of 16 days
				\ x 2AM			
	31st	”	6PM x \		1	”	at $4.9769
				\ x 2AM			

Effective with May 1st, 1926
C.W.D.

[341]

(Testimony of F. E. Gorman.)

EXAMPLE "B"

SHOWING METHOD OF COMPENSATING EMPLOYES WORKING BROKEN ASSIGNMENTS DURING 31 DAY MONTH, USING MONTH OF MAY, 1926, TO ILLUSTRATE FOR DECKHAND.

		Watch	Worked	Time	
SAT.	1st	12 & 24	6PM x\ to	1½ days	at $4.1742 or 1/31st.
	2nd		\x 6AM		For 30 day month
					See Example "C"
	3rd	"	6AM x —— x 6PM	1½ days	....
	4th	"	6PM x\	1½ "	
	5th	"	\x 6AM		For month of
					February daily
					rate would be
	6th	"	6AM x —— x 6PM	1½ "	$4.6214 or 1/28th
					on 28-day month,
	7th	"	6PM x\	1½ "	or $4.4621, i.e.
SAT.	8th	"	\x 6AM		1/29th, for 29
					day month.
	9th	"	6AM x —— x 6PM	1½ "	
	10th	"	6PM x\	1½ "	
	11th	"	\x 6AM		Total of 12 days
	12th	"	6AM x —— x 6PM	1½ "	at $4.1742
	13th	....	....	....	....
	14th	8 & 16	6AM x to x 2PM	1	day at $4.9769 or 1/26th
SAT.	15th	DAY OFF			of the monthly
					wage, account Sat-
					urday being the
	16th	"	6AM x--to--x 2PM	1 "	"Day Off" on the
					position, and
	17th	"	6AM x —— x 2PM	1 "	there being five
					Saturdays in the
	18th	"	6AM x —— x 2PM	1 "	month, leaving 26
					working days.
	19th	"	6AM x —— x 2PM	1 "	
	20th	"	6AM x —— x 2PM	1 "	For 3-day month
					see Example "C"
	21st	"	6AM x —— x 2PM	1 "	

(Testimony of F. E. Gorman.)

	Watch	Worked	Time	
SAT. 22nd	8 & 16	DAY OFF		For month of February (28-day
23rd	''	6AM x——x 2PM	1 ''	month) 8 & 16 hour watch em-
24th	''	6AM x——x 2PM	1 ''	ploye would receive $5.3917
25th	''	6AM x——x 2PM	1 ''	per day, as there would be four (4)
26th	''	6AM x——x 2PM	1 ''	days off during the month.
27th	''	6AM x——x 2PM	1 ''	
28th	''	6AM x——x 2PM	1 ''	
SAT. 29th	''	DAY OFF		
30th	''	6AM x——x 2PM	1 ''	Total of 15 days
31st	''	6AM x——x 2PM	1 ''	at $4.9769

Effective with
May 1, 1926.
CWD

[342]

(Testimony of F. E. Gorman.)

EXAMPLE "C"

SHOWING METHOD OF COMPENSATING EMPLOYES WORKING BROKEN ASSIGNMENTS DURING 30 DAY MONTH USING APRIL 1926 TO ILLUSTRATE FOR DECKHAND.

	Watch	Worked	Time	
1st FRI.	8 & 16	6AM x —— to —— x 2PM	1	day at $5.1760 or 1/25th of the monthly wage
2nd		DAY OFF		account Friday being the "Day Off" on the
3rd	"	6AM x —— to —— x 2PM	1 "	position, and there being five Fridays
4th	"	6AM x —— to —— x 2PM	1 "	in the month, leaving 25 working days.
5th	"	6AM x ———— x 2PM	1 "	
6th	"	6AM x ———— x 2PM	1 "	For 31 day month see Examples "A" and "B"
7th	"	6AM x ———— x 2PM	1 "	
8th FRI.	"	6AM x ———— x 2PM	1 "	
9th	"	DAY OFF		Total of 8 days at $5.1760 per day.
10th	"	6AM x ———— x 2PM	1	
11th		....	....	....
12th	12 & 24	6AM x —— to —— x 6PM	1½	at $4.3133 or 1/30th April being a 30-day month
13th	"	6PM x — \	1½	
14th		\ — x 6AM		
15th	"	6AM x ———— x 6PM	1½	....
16th	"	6PM x — \	1½ "	Time allowance is credited to the day on which the watch starts.
17th	"	\ — x 6AM		

(Testimony of F. E. Gorman.)

Watch		Worked	Time
18th	12 & 24	6AM x ———— x 6PM	1½ day
19th	”	6PM x ———— x 6AM	1½ ”
20th	8 & 16	6PM x — \ — x 2AM	1 ”
WED. 21st		DAY OFF	
22nd	”	6PM x— to — \ x 2AM	1 ”
23rd	”	6PM x — \ — x 2AM	1 ”
24th	”	6PM x — \ — x 2AM	1 ”
25th	”	6PM x — \ — x 2AM	1 ”
26th	”	6PM x — \ — x 2AM	1 ”
27th	”	6PM x — \ — x 2AM	1 ”
WED. 28th		DAY OFF	
29th	”	6 PM x——to \ x 2AM	1 ”
30th	”	6PM x — \ — x 2AM	1 ”

Total of 9 days at $4.3133 per day At $4.9769 or 1/26th of the monthly wage account Wednesday being the "Day Off" on the position, and there being 4 Wednesdays in the month, leaving 26 working days.

For employes in extra service or working irregular watches, see Examples "D"

Total of nine days at $4.9769 per day.

Effective with
May 1, 1926.
C.W.D.

[343]

(Testimony of F. E. Gorman.)

EXAMPLES "D"

SHOWING METHOD OF COMPENSATING EXTRA EMPLOYES, OR THOSE WORKING IRREGULAR WATCHES

Employes serving on "12 & 24" hour watches to be paid as follows:

(a) For thirty-one (31) day month, daily rate to be arrived at on basis of 1/31st, of the monthly wage.

(b) For thirty (30) day month, daily rate to be arrived at on basis of 1/30th, of the monthly wage.

(c) During February, for twenty-eight (28) day month, daily rate to be arrived at on basis of 1/28th, of the monthly wage; twenty-nine (29) day month, 1/29th, of the monthly wage.

Employes serving on such "8 & 16" hour watches to be paid as follows (where no established "Day off" for use in obtaining divisor)—

(d) For thirty-one (31) day months and thirty (30) day months, daily rate to be arrived at on basis of 1/26th of the monthly wage.

(e) During February, for twenty-eight (28) day month, daily rate to be arrived at on basis of 1/24th, of the monthly wage; twenty-nine (29) day month, 1/25th of the monthly wage.

Effective with May 1st, 1926. C.W.D. [344]

(Testimony of F. E. Gorman.)

The witness was shown a table relating to rates of pay of firemen and testified in substance:

Column A shows the rates paid a 12 and 24 hour fireman before the September adjustment. This table relates to broken assignments. The firemen shown in Column A were paid month by month beginning March 1st.

Q. When you came to make the adjustment and refiguring the time of these firemen, what daily rate did you take?

A. As shown on the exhibit, $5.6109.

Q. And that was arrived at, as shown by the exhibit, by multiplying 12 times the monthly salary of $146.35, and dividing that by 313 working days.

A. Well, I did not make the formula, but that method, as shown there, will give you the figure, $5.6109.

Q. The hourly rate was 0.7014.

A. It would be, following the formula set forth there.

Q. And that was arrived at, as shown on this exhibit?

A. Yes, sir.

Q. So that where a man worked 12 hours on a watch in one month, and did not work any other 12-hour watch during the month, if it was a 21-watch month, he had been paid during that six months a day and a half at the rate of $4.646 per day?

A. Yes, sir.

(Testimony of F. E. Gorman.)

Q. And when you came to make the adjustment, you gave him a day and a half at the daily eight-hour rate, and paid him $5.6109?

A. Yes, sir. We used that.

Q. And the same applied, with the exception—

A. (Int'g) Of course, we figured what it would amount to at a day and a half times $5.6109 and subtracted what we had originally paid him at $4.646, and we allowed him the difference. [345]

12-24, FIREMAN—RATES OF PAY, MCH. 1-AUG. 31, 1928
Showing rates originally paid and Rates used in adjustment of Sept. 1928.

COL. A		Broken Assignments COL. B.	
Rates paid before Sept. Adjustment		Rates used in Sept. adjustment	
The monthly rate was	$146.35	The monthly rate was	$146.35
Daily rate for 8 hour day—21 watches		Daily rate	$5.6109
21 12-hr. watches= 31-1/2 8-hr. days		146.35 x 12 months=	$1756.20
$145.35 -:- 31-1/2=	$4.646	divided by 313 working days	
Daily rate for 8 hr. day—20 watches:		This formula prescribed by Rule 2 (a) of the agreement, and is the same daily rate as paid to 8-16 hr. firemen.	
20 12-hr. watches = 30 8-hr. days.			
$146.35 -:- 30 =	$4.8783		
Hourly rate—arrived at under Rule 9 of agreement—12 months x $146.35=	$1756.20	Hourly rate	$.7014
divided by 2920 hrs. (or 8 x 365) =	$.6014	$146.35 x 12 months =	$1756.20
		divided by 2504 hrs. the no. of hours in 313 8-hr. working days is formula prescribed by Rule 9 (a) of agreement and is same hourly rate paid to 8-16 hour firemen.	

[346]

(Testimony of F. E. Gorman.)

The witness continued: We used the same system for everybody, deckhands as well as firemen. The deckhands got about $7 a month less than the firemen; the figures are in the record. The figures shown in Column A were paid month by month during the period from March 1st to September 1st, and the basis of the adjustment is shown in Column B, and that applied in every case to the broken watch.

Q. You say this hourly basis was arrived at in the same manner as prescribed in Rule 9 of the 1925 agreement for computing overtime, which reads: "Subdivision (a) on 8 and 16 hour watches divide 12 times the monthly salary by 2504."

A. That is correct.

Q. Have you checked Plaintiff's Exhibit Number 10, which shows the overtime they claim in this case, and the amount demanded?

A. Yes, sir, I have checked the exhibit.

Q. Does their demand for overtime of .7014 for firemen, is that arrived at, or is that the same figure as is arrived at by subdivision (a) of Rule 9?

A. Yes, sir.

Q. Is their hourly demand for overtime for the deckhands arrived at then in the same manner as under Rule 9?

A. Yes, sir.

Q. Have you checked plaintiff's Exhibits 8-A and 8-B, the large exhibits, which you originally prepared?

(Testimony of F. E. Gorman.)

A. Yes, sir, I have checked these exhibits.

Q. Now, have you made a table showing the result of that check?

A. Yes, sir, I have.

Q. Is this table correct?

A. Well, it is, yes, sir; I have checked it and it checked true, according to my check.

The table was introduced in evidence as Exhibit G and is as follows: [347]

ANALYSIS AND COMPARISON OF FULL MONTHLY AND BROKEN MONTHLY ASSIGNMENTS

Southern Pacific Co. (Plaintiff's Ex. 8a)

	(1) No. of full monthly assignments worked at 12 hours each.	(2) No. of broken monthly assignments worked at 12 hours each	(3) Total number of 12 hour watches in broken monthly assignments —Col. 2
Firemen	294	153	2248
Deckhands	812	288	3941
Northwestern Pacific R. R. (Plaintiff's Ex. 8b)			
Firemen and Deckhands	116	60	914

Note: For definition of broken assignment See Note to Rule 1 of 1925 Agreement—Plaintiff's Ex. 2. That note has not changed by the Arbitration Board.

MR. BOOTH: Q. There was some testimony here regarding the fireman named Leimar, who did not work the full month during any of these six months. For the sake of the record, and, as a basis for an

(Testimony of F. E. Gorman.)
illustration which I desire to use in argument, I will ask you to state, month by month, how much was paid Leimar in back pay in September for overtime during those six months?

A. In the month of March, 1928, he received $13.48; the month of April he received $1.10; in the month of May $14.93; the month of June $20.88; the month of July, $20.88; and the month of August $27.50

Q. Now, will you read off, please, the same monthly payments for A. L. Costa, who worked every month?

A. A. L. Costa received in March, 1928, $30.39; April $29.98; May, $30.39; June, $21.98; July, $21.98; August, $30.39. [348]

THE COURT: That was overtime?

A. That was overtime, yes, sir, your Honor.

MR. SHARP: Q. That was back-pay?

A. That was back pay that was allowed him on the adjustment.

MR. SHARP: That is the fundamental difference in the two figures. Under our contention, all the company did was to figure back pay, and what we want is overtime.

MR. BOOTH: We don't see any difference in paying a man a day and a half at the 8-hour rate and paying him a day at the 8-hour rate and 4 hours overtime, because a day and a half at the daily eight-hour rate was just the same as the 12 hours.

MR. SHARP: That is the difference between the parties in a nut shell, your Honor. It is our contention, as we will argue, that is just what you can't do.

(Testimony of F. E. Gorman.)

Cross-Examination.

MR. SHARP: Q. I just want to bring one or two matters out clearly. As I understand the exhibit which is on the board, Column A shows the basis upon which checks were originally made out?

A. Originally, yes, sir.

Q. In other words, where a man worked the full number of assigned watches, he got paid at $146.35 for a month and where he worked less, you figured it on this daily or hourly basis?

A. Yes, sir.

Q. Now, when you came to making the adjustment, all that you did was to refigure the hours or days worked on this new rate shown in Column B?

A. Yes, sir.

Q. Then, after figuring what the men should have gotten under your formula at this new rate you gave the men checks to compensate between the difference at the old rate and at the new rate?

A. Yes, sir. [349]

Q. All that you were concerned with was merely giving the men an additional so much per hour or day for the total number of hours worked by the men during each period.

A. I was paying them exactly according to the formula handed down to me.

Q. I realize that, I am not questioning it. I am trying to show the arithmetic, the actual process you went through.

A. The way I pointed out was the way it was done.

(Testimony of F. E. Gorman.)

Q. In figuring the amount that should have been paid under your new adjusted rate, you lumped the days and hours by month, as I understand the application of that formula, as explained by you. In other words, you took the total number of hours the men worked in a month, added them together for the month, divided by 8 to get a theoretical number of eight hour days, and then applied this new increased rate.

A. In other words, if a man had worked 31-1/2 8-hour days during the month, I multiplied 31-1/2 times the 8-hour rate of pay, and subtracted what I had already paid him under the 12-hour rate of pay and gave him the difference.

Q. In doing that, you did not segregate the last four hours of each watch from the first eight hours of each watch, but treated the entire 12 hours as an additional 12 hours to be added to your monthly total?

A. The basis of pay allowed was a day and a half for each of those 12-hour watches.

The same principle was involved throughout.

Q. I am not talking about principle; I am talking about what you actually did. I am trying to get at the arithmetic, what you actually physically did. In order to apply the new rate to find out what the men should have been paid, you took the total number of hours actually worked that particular month. [350]

A. Total number of eight hour days.

Q. Yes, Well, as a matter of fact, I am just trying to get the physics before the court. Say, in the month

(Testimony of F. E. Gorman.)

of March a particular fireman worked twenty 12-hour watches, you multiplied by 20 that 12 to get 240 hours, and divide that by 8 to get 30 days.

A. The hours don't enter into it at all, Mr. Sharp. It is all days. If it is a 12-hour watch it is a day and a half; if it is an 11-hour and 40-minute watch, it is still a day and a half.

Q. Well, all right. Let me put some figures on the blackboard. Take any particular man—it doesn't make any difference who—that in a particular month worked, let us say, 21 watches. You said that was the equivalent of 31-1/2 eight hour days, didn't you?

A. Yes.

Q. And you applied the daily rate of $5.6109, didn't you?

A. When I was figuring his adjustment, yes.

Q. And that would have been exactly the same thing as taking the total number of hours and multiplying it by .7014; it comes to exactly the same amount?

A. Twelve hour watches; it would work out exactly the same.

Q. It would work out exactly the same?

A. Yes.

Q. What I am trying to get before the court is what you actually did. You aggregated the number of watches by the month, you aggregated the number of days by the month, you aggregated, in effect, the number of hours per month, and you treated them all as a total unit?

(Testimony of F. E. Gorman.)

A. If you take a man with a full assignment it would work out that way, yes.

Q. All right. Now, you did not make any segregation at all as to the last four hours of any particular watch, or the first eight hours of any particular watch, but you treated them all exactly the same?

A. As a day and a half [351]

Q. And added that day and a half to get your total of 31-1/2 eight hour days for that month?

A. For a twenty-one watch assignment, yes, sir.

Q. But where a man worked 21 watches, you put down 21 twelve hour watches; you simply treated that as 31-1/2 days for that period?

A. It would be, yes, sir.

Q. And at no part did your formula require you, nor did you in actual practice, treat and differently the last four hours of a 12-hour watch from the first 8-hours of a 12-hour watch?

A. The formula will bear it out. It is made into eight hour days.

Q. Yes. In other words, it amounts to your taking the last four hours of the first watch and the second four hours of the second watch and calling the two twelve hour watches the equivalent of three eight hour watches?

A. Three eight hour days, yes.

MR. HANCOCK

Recalled as a witness

MR. BOOTH: Q. Mr. Hancock, you heard Mr. Gorman's testimony this morning regarding the memorandum of May 1, 1926, and the subsequent memorandum of May 25th or 26th, 1926, which slightly changed that memorandum?

A. Yes, sir, it was slightly changed. Mr. Deal called my attention to the fact that a 12 and 24-hour man starting his first watch early in the month would actually have 31-1/2 days service in a 31-day month.

Q. In other words, if you followed the formula of May 1, 1926, he would get a half a day the worst of it on a broken assignment?

A. Yes, sir.

Q. I ask you whether this memoranda applied to the Northwestern Pacific, as well as to the Southern Pacific?

A. I would not be able to answer that. Copies of it were furnished to the Northwestern Pacific, but whether they placed them in effect, [352] I could not testify.

Q. Were these memoranda reached after a conference between you and Mr. Deal?

A. Well, Mr. Deal was consulted with and had to do with the preparation of the memoranda. He initialed them when they were completed.

Q. And after they were reduced to mimeographed form, did you send him copies of them.

A. Yes, sir.

(Testimony of Mr. Hancock)

Q. Was there ever, to your knowledge, any complaint from Mr. Deal or anyone else regarding the interpretations as set forth in the memoranda?

A. Only as to the suggestion with respect to the 31-1/2 eight hour days.

Q. At the present time there are no monthly rates of pay for assigned watches?

A. No. Later on, I believe it was early in 1929, Mr. Deal and myself agreed to adopt daily rates of pay, and abandoned the use of the monthly rate entirely." [353]

Both parties rested.

Mr. Booth moved that

1. The plaintiffs be required to elect whether they will pursue their motion for appointment of a Commissioner in the original proceeding to impeach the award—No. 1955-S in this court—or whether they will stand on their pleading and proceeding denominated an ancillary bill in equity or whether they will stand on their original bills in equity numbers 3635S and 3636S.

2. The proceedings and suits referred to under paragraph "one" of this motion and each of them be dismissed for want of jrisdiction of this court to determine them or any of them.

3. That if said motion to elect be denied or if this court proceeds to determine the issues arising upon the pleadings in said ancillary proceeding or

in said original proceedings (Nos. 3635S and 3636S) it find in favor of the defendants and find: (a) That the controversy between the parties is a dispute respecting the meaning or application of an award under the Railway Labor Act of 1926 which required and requires a resubmission to the arbitration board which made said award and an application to the Federal Mediation Board for a reconvention of said board of arbitration. (b) That plaintiffs' assignors were before their assignments to plaintiffs predecessor in title, fully paid by these defendants each and all sums due them under said award or due, or payable to, them or any of them by reason of their having worked twelve hour watches during the period from March 1, 1928, to August 31, 1928, inclusive. (c) That before the delivery and cashing of the adjustment checks in September and October, 1928, a dispute existed between the defendants' employes, whose assigned claims are held by plaintiff Union, and each of the defendants as to the proper method of computing payment to the men who worked twelve-hour [354] watches during a period when 12-24 hour assigned watches had no longer been provided for by the arbitration award; that the allegations of the separate defenses in the answers respecting the form, delivery, cashing and all matters pertaining to pay checks delivered in October and November, 1928, are true and correct; that the defense of release and of accord and satisfaction are true in fact and valid in law and that said releases and satisfactions have

never been rescinded or set aside and are a bar to plaintiffs' recovery: (d) that plaintiffs take nothing by any of their suits or proceedings herein.

The Court reserved its ruling on the motions.

Later on the court stated that the motion for findings was granted.

After discussion the motion for election was submitted.

Whereupon the case was argued by Mr. Sharp and Mr. Booth.

In the course of Mr. Sharp's argument, plaintiffs' Exhibit No. 15 was admitted into evidence.

The matter was submitted.

The foregoing constitutes all the evidence received by the Court.

Jan. 10, 1936.

DERBY, SHARP, QUINBY & TWEEDT,
Solicitors for Plaintiffs. [355]

IT IS HEREBY STIPULATED that the foregoing statement is true and correct and contains all the testimony and proceedings upon the trial of the foregoing cases and the same may be certified by the court and used on appeal, and may be included in the record on appeal in lieu of the original statement filed.

January 10, 1936.

DERBY, SHARP, QUINBY & TWEEDT,
Solicitors for Plaintiffs.

HENLEY C. BOOTH

A. A. JONES

Solicitors for Defendants. [356]

CERTIFICATE OF COURT

Pursuant to the foregoing stipulation, the foregoing statement is hereby found and certified to be true and correct and to contain all the testimony and proceedings in the foregoing case and upon the trial thereof, and may be filed as part of the record on appeal in lieu of the original statement filed. January 14. 1936

A. F. ST. SURE
District Judge.

[Endorsed] Filed Jan. 14, 1936. [357]

[Title of Court and Causes—Nos. 1955-S, 3635-S, 3636-S.]

ORDER ALLOWING APPEAL.

The within petitions for appeal in the above matters are hereby allowed and a joint bond for appeal in all the above matters is hereby fixed at the sum of Two Hundred Fifty ($250.00) and 00/100 Dollars.

A. F. ST. SURE
District Judge.

Dated: October 22, 1935. [358]

[Title of Court and Cause.—No. 1955]

PETITION FOR APPEAL.

To the Honorable A. F. St. Sure, District Judge:

Now come Ferryboatmen's Union of California, Inc., a corporation, Ferryboatmen's Union of California, an unincorporated association, and C. W. Deal, plaintiffs herein, by Messrs Derby, Sharp, Quinby & Tweedt, their solicitors, and feeling aggrieved by the final orders and decrees of this Court heretofore rendered and entered herein denying plaintiffs certain relief requested by them, hereby pray that an appeal may be allowed to them upon all of said decrees and orders, to the Circuit Court of Appeals for the Ninth Circuit, because of the errors specified in the assignment of errors filed in connection with this petition.

Petitioners further pray that a citation may issue as [359] provided by law, that a transcript of the record, proceedings and papers on which said decree was based be made and duly authenticated and lodged in said Circuit Court of Appeals at the City of San Francisco, State of California, and that the amount of security for costs may be fixed by the order allowing the appeal.

Dated: October 21, 1935.

DERBY, SHARP, QUINBY & TWEEDT,
Solicitors for Plaintiffs. [360]

[Title of Court and Cause.—No. 3635-S.]

PETITION FOR APPEAL.

To the Honorable A. F. St. Sure, District Judge:

Now come Ferryboatmen's Union of California, Inc., a corporation, Ferryboatmen's Union of California, an unincorporated association, and C. W. Deal, plaintiffs herein, by Messrs. Derby, Sharp, Quinby & Tweedt, their solicitors, and feeling aggrieved by the final orders and decrees of this Court heretofore rendered and entered herein denying plaintiffs certain relief requested by them, hereby pray that an appeal may be allowed to them upon all of said decrees and orders, to the Circuit Court of Appeals for the Ninth Circuit, because of the errors specified in the assignment of errors filed in connection with this petition.

Petitioners further pray that a citation may issue as provided by law, that a transcript of the record, proceedings and papers on which said decree was based be made and duly authenticated and lodged in said Circuit Court of Appeals at the City of San Francisco, State of California, and that the amount of security for costs may be fixed by the order allowing the appeal.

Dated: October 21, 1935.

DERBY, SHARP, QUINBY & TWEEDT,
Solicitors for plaintiffs [361]

[Title of Court and Cause.—No. 3636-S.]

PETITION FOR APPEAL.

To the Honorable A. F. St. Sure, District Judge:

Now come Ferryboatmen's Union of California, Inc., a corporation, Ferryboatmen's Union of California, an unincorporated association, and C. W. Deal, plaintiffs herein, by Messrs. Derby, Sharp, Quinby & Tweedt, their solicitors, and feeling aggrieved by the final orders and decrees of this Court heretofore rendered and entered herein denying plaintiffs certain relief requested by them, hereby pray that an appal may be allowed to them upon all of said decrees and orders, to the Circuit Court of Appeals for the Ninth Circuit, because of the errors specified in the assignment of errors filed in connection with this petition.

Petitioners further pray that a citation may issue as provided by law, that a transcript of the record, proceedings and papers on which said decree was based be made and duly authenticated and lodged in said Circuit Court of Appeals at the City of San Francisco, State of California, and that the amount of security for costs may be fixed by the court allowing the appeal.

Dated: October 21, 1935.

DERBY, SHARP, QUINBY & TWEEDT,
Solicitors for Plaintiffs.

[Endorsed]: Filed Oct. 22, 1935. [362]

[Title of Court and Causes—Nos. 1955-S, 3635-S, 3636-S.]

ASSIGNMENTS OF ERROR

Now come plaintiffs Ferryboatmen's Union of California, Inc., a corporation, Ferryboatmen's Union of California, an unincorporated association, and C. W. Deal, by Messrs. Derby, Sharp, Quinby & Tweedt, their solicitors, and in connection with their petitions for appeal, say that in the record, proceedings, findings and in the [363] final decree herein, manifest error has intervened to the prejudice of the plaintiffs, to-wit:

I.

The Court erred in making and entering its final order and decree herein, and in ordering and in decreeing in favor of defendants and against the plaintiffs.

II.

The Court erred in not modifying the findings of and conclusions of law herein in accordance with plaintiffs' objections and proposals filed herein.

III.

The Court erred in signing the findings of fact and conclusions of law as proposed by defendants herein.

IV.

The Court erred in refusing to rule on plaintiffs' motion in Case No. 1955-S for an appropriate order to carry into effect the judgment and decree

therefore rendered therein and in not making any such order nunc pro tunc as of September 25, 1933, in accord with the stipulation of the parties.

V.

The court erred in allowing costs to defendants.

VI.

The court erred in finding that the employes referred to in the pleadings were "fully paid" and in particular in finding that the defendants "did * * * fully pay" to each employe all sums of money due him.

VII.

The Court erred in failing to set forth or allege the facts upon which are based the conclusion of full payment and in refusing to set forth the facts relied upon in making such conclusion and finding.

[364]

VIII.

The Court erred in stating in the findings that the employes' demand "necessitated an interpretation of the award." The Court also erred in not specifying the parts of the award involved and the alleged controversy of the parties in reference thereto.

IX.

The Court erred in finding that the Union could not satisfy the judgment obtained by it herein in its favor.

X.

The Court erred in purporting to find that the official for the carriers "further said in explanation" a special form of check was used because he understood the men contemplated making some technical claim.

XI.

The Court erred in failing to find that no such statement was ever communicated to any employe or union representative and in failing to find that the official representing the carriers repeatedly stated he never discussed the matter with the Union and therefore could not have communicated any such statement to the Union. The Court also erred in failing to find that no such statement was ever communicated to the union or to any employe.

XII.

The Court erred in failing to find that said official for the carriers stated as follows:

> "Said official of the carriers told the said business manager of the union 'We will pay the men what we think they are entitled to, what the award says they should be paid, and if there is anything wrong we will take it up afterward, as we have done in the past.' "

The Court also erred in not finding that there was no difference of opinion between the parties. [365]

XIII.

The Court erred in failing to find that neither the amounts due the men nor the method of com-

puting the same was ever discussed by any official representing the carriers, with the men or their representatives.

XIV.

The Court erred in finding there was a dispute "concerning the amount due" and in failing to find the matter was never discussed between the parties.

XV.

The Court erred in finding that the checks were accepted "in full satisfaction," and in failing to find that all wage checks under the union practice and custom of the carriers were to be cashed subject to correction thereafter.

XVI.

The Court erred in failing to find that it was the uniform and regular practice of the carriers to correct and adjust all wage checks without exception and without objection regardless of the fact they were endorsed as received in full.

XVII.

The Court erred in failing to find that in attempting to secure the abolition of 12-hour watches the men claimed they were motivated by the desire to abolish a system which was deemed unsafe and dangerous.

XVIII.

The Court erred in failing to find that the men during the period of controversy worked all the watches to which they were assigned by the carriers,

and that none of the men were assigned to 8-hour watches but were assigned to 12-hour watches by the carriers, and paid a monthly wage for all assigned watches. [366]

XIX.

The Court erred in failing to find as to the number of hours in excess of eight worked by each man.

XX.

The Court erred in failing to find for the plaintiffs and against the defendants and also erred in failing to order decree entered for plaintiffs and against defendants and in failing to enter a decree for plaintiffs.

And said plaintiffs and each of them pray that the decree of said District Court of the United States for the Northern District of California, Southern Division denying plaintiffs relief and allowing defendants a decree and costs may be reversed and annulled and that a decree and orders granting plaintiffs and each of them relief may be entered.

Dated: October 21, 1935.

DERBY, SHARP, QUINBY & TWEEDT,
Solicitors for Plaintiffs.

[Endorsed]: Filed Oct. 22, 1935. [367]

[A bond on appeal was duly approved and filed.] [368]

[Title of Court and Causes—Nos. 1955-S, 3635-S, 3636-S.]

STIPULATION RE CONSOLIDATING FOR APPEAL, ETC.

Is is hereby stipulated by and between the parties hereto that all the matters above captioned may be consolidated and heard on appeal as one matter. [371]

There shall be but one decree entered herein covering all the above matters and on appeal there shall be only one petition for appeal, one order allowing appeal, one bond on appeal and one record on appeal and in all other respects the matters shall be treated on appeal as one case.

Dated: July 22, 1935.

H. C. BOOTH & A. A. JONES
Attorneys for defendants.

DERBY, SHARP, QUINBY & TWEEDT
Attorneys for plaintiff

So ordered.

July 23, 1935.

A. F. ST. SURE,
District Judge.

[Endorsed]: Filed July 23, 1935. [372]

[Praecipes were duly filed by the respective parties hereto.] [373]

[Title of Court.]

I, WALTER B. MALING, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 376 pages, numbered from 1 to 376, inclusive, contain a full, true and correct transcript of the records and proceedings in the Equity causes entitled as follows: IN THE MATTER OF AN AWARD filed herein October 31, 1927, etc. No. 1955-S. FERRYBOATMEN'S UNION OF CALIFORNIA, etc., et al. vs. SOUTHERN PACIFIC COMPANY, No. 3635-S. FERRYBOATMEN'S UNION OF CALIFORNIA, etc., et al., vs. THE NORTHWESTERN PACIFIC RAILROAD COMPANY, No. 3636-S, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of $51.95 and that said amount has been paid to me by the Attorneys for the Appellants herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 28th day of January, A. D. 1936.

[Seal] WALTER B. MALING, Clerk

By J. P. Welsh, Deputy Clerk.

[377]

[Title of Court and Cause.—No. 1955-S.]

CITATION ON APPEAL.

United States of America, ss:

The President of the United States of America To Northwestern Pacific Railroad Company, Southern Pacific Company and The Western Pacific Railroad Company, Greeting:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern Division of California, Southern Division, wherein Ferryboatmen's Union of California, a nonprofit corporation, Ferryboatmen's Union of California, an unincorporated association, and C. W. Deal are appellants, and you are appellees, to show cause, if any there be, why the decree or judgment rendered against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable A. F. St. Sure, United States District Judge for the Northern District of California, this 23rd day of October, A. D. 1935.

A. F. ST. SURE

United States District Judge.

Receipt of a copy of the within citation is hereby acknowledged this 25th day of October, 1935.

HENLEY C. BOOTH & A. A. JONES
Solicitors for Appellees. N. W. P. R. R. Co. & S. P. Co.

[Endorsed]: Filed Oct. 28, 1935 [378]

[Title of Court and Cause.—No. 3635-S.]

CITATION ON APPEAL.

United States of America, ss:

The President of the United States of America To Southern Pacific Company, Greeting:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, Southern Division, wherein Ferryboatmen's Union of California, a non profit corporation, and C. W. Deal are appellants, and you are appellee, to show cause, if any there be, why the decree or judgment rendered against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable A. F. St. Sure, United States District Judge for the Northern District of California, this 23rd day of October, A. D. 1935.

A. F. ST. SURE
United States District Judge.

Receipt of a copy of the within citation is hereby acknowledged this 25th day of October, 1935.

HENLEY C. BOOTH & A. A. JONES
Solicitors for Appellee S. P. Co.

[Endorsed]: Filed Oct. 28, 1935. [379]

[Title of Court and Cause—No. 3636-S.]

CITATION ON APPEAL.

United States of America, ss:

The President of the United States of America To Northwestern Pacific Railroad Company, Greeting:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, Southern Division, wherein Ferryboatmen's Union of California, a non profit corporation, and C. W. Deal are appellants, and you are appellee, to

show cause, if any there be, why the decree or judgment rendered against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable A. F. St. Sure, United States District Judge for the Northern District of California, this 23rd day of October, A. D. 1935.

A. F. ST. SURE

United States District Judge.

Receipt of a copy of the within citation is hereby acknowledged this 25th day of October, 1935.

HENLEY C. BOOTH & A. A. JONES

Solicitors for Appellee. N. W. P. R. R. Co.

[Endorsed]: Filed Oct. 28, 1935. [380]

[Endorsed]: No. 8117. United States Circuit Court of Appeals for the Ninth Circuit. Ferryboatmen's Union of California, an unincorporated association, Ferryboatmen's Union of California, a non profit corporation, and C. W. Deal, Appellants, vs. Northwestern Pacific Railroad Company, Southern Pacific Company, and The Western Pacific Railroad Company, Appellees. Ferryboatmen's Union of California, a non profit corporation, and C. W. Deal, Appellants, vs. Southern Pacific Company, Appellee. Ferryboatmen's Union of California, a non profit corporation and C. W. Deal, Appellants, vs. Northwestern Pacific Railroad Company, Appellee. Transcript of Record Upon Appeals from the District Court of the United States for the Northern District of California, Southern Division.

Filed January 29, 1936.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals for the Ninth Circuit

No. 8117

[Title of Causes—Nos. 1955-S, 3635-S, 3636-S.]

STIPULATION THAT CERTAIN PAPERS NEED NOT BE PRINTED.

It is hereby stipulated by and between the parties hereto as follows:

1. There need not be set out in full in the printed record on appeal the following pages of the typewriten transcript:

A. Ancillary bill in action 1955-S, pages 1-10 inclusive.

B. Answer of Southern Pacific Company to ancillary bill in 1955-S, pages 20-42, inclusive.

C. Answer of Northwestern Pacific Railroad Co. to ancillary bill in 1955-S, pages 43-66, inclusive.

D. Bill of Northwestern Pacific Railroad Co. in action 3636-S, pages 130-141, inclusive.

E. Answer of Northwestern Pacific Railroad Co. in action 3636-S, pages 142-180 inclusive.

F. The bond, pages 368-370, inclusive.

G. Two praecipes, pages 370-376 inclusive.

2. In lieu of the ancillary bill and answers in 1955-S on pages 1-66 inclusive of the typewritten record, the following may be inserted:

In action 1955-S the plaintiffs filed an "Ancillary Bill to enforce Decree already rendered herein." The allegations therein contained are substantially the same as the bill against the Southern Pacific Company which is printed later herein, being action #3635-S. For reasons of economy and in order to avoid unnecessary duplication this bill is not printed here.

The Southern Pacific Company and the Northwestern Pacific Railroad Company filed answers to this bill. The allegations of these answers are substantially the same as the allegations of the Southern Pacific Company in their answer in #3635-S, which is printed later herein. They are not printed here as a matter of economy and in order to avoid unnecessary duplication.

3. In lieu of the bill and answer in action 3636-S, on pages 130-180 of the typewritten record, the following may be inserted:

In action 3636-S plaintiffs filed a "Bill in Equity to Enforce Decree" against the Northwestern Pacific Railroad Company. The allegations of this bill are the same as the allegations of the bill in 3635-S, except for the names of the men involved and the amounts claimed. The data as to the men involved and the amounts paid and claimed appear in the various exhibits introduced by the parties, as set out in the statement of evidence and are printed later

herein. As a matter of economy and to avoid unnecessary duplication this bill is not printed herein.

The answer in the same case is omitted for the same reasons and because the allegations, except for names and amounts, are identical with the allegations of the Southern Pacific Company in 3635-S, which is printed herein.

4. In lieu of the bond, on pages 368-370 of the typewritten transcript, the following may be inserted.

A bond on appeal was duly approved and filed.

5. In lieu of the praecipe on pages 370-376 of the typewritten transcript, the following may be inserted:

Praecipes were duly filed by the respective parties hereto.

6. Only three copies of the printed transcript need contain the large photostated exhibit 8-A. These will be furnished by counsel for plaintiffs. Should additional copies of this photostat exhibit be required for use in proceedings before the Supreme Court of the United States, Messrs. Derby, Sharp, Quinby & Tweedt personally guarantee to provide and pay for such copies as may be needed or deemed necessary for use by counsel for carriers. Said counsel for plaintiffs will also furnish Mr.

Booth with an extra copy of the exhibit for his own personal use in the present proceeding.

March 27, 1936.

DERBY, SHARP, QUINBY & TWEEDT,
Solicitors for Plaintiffs.
HENLEY C. BOOTH
A. A. JONES
Solicitors for Southern Pacific Company and Northwestern Pacific Railroad Company.

[Endorsed]: Filed March 30, 1936, Paul P. O'Brien, Clerk.